(10)

No. 87-1269-AFX
Status: GRANTED

Docketed:
January 27, 1988

Title: March Fong Eu, Secretary of State of California, et al., Appellants
v.
San Francisco County Democratic Central Committee, et al.

Court: United States Court of Appeals for the Ninth Circuit

Counsel for appellant: Graybill,Geoffrey L.

Counsel for appellee: Brosnahan,James J.

NOTE: Notice of Appeal filed 11/19/87 amended refiled 1/14/88 cited application for stay of mandate filed 11/25/87 & den. by O'Connor, J., on 12/4/87 cited

Entry	Date	Note	Proceedings and Orders
2	Nov 25 1987		Application for Stay filed (A-417) and order denying same by O'Connor, J., on December 4, 1987.
1	Jan 27 1988	G	Statement as to jurisdiction filed.
3	Jan 27 1988		Appendix of appellant Eu, Sec. of St. of CA filed.
5	Feb 17 1988		Order extending time to file response to jurisdictional statement until March 30, 1988.
6	Mar 30 1988		DISTRIBUTED. April 15, 1988
7	Mar 30 1988	X	Motion of appellee SF County Democratic Central Committee and appendix to dismiss or affirm filed.
8	Apr 18 1988		PROBABLE JURISDICTION NOTED. The Chief Justice OUT. **********
10	May 12 1988		Order extending time to file brief of appellant on the merits until June 16, 1988.
11	Jun 2 1988		Order further extending time to file brief of appellant on the merits until July 2, 1988.
13	Jun 3 1988	*	Record filed. Certified copy of original record, volumes 1-5, box, received.
12	Jun 6 1988	*	Record filed. Certified copy of original transcript of record, volumes6, 7 and 8 received.
14	Jul 1 1988		Brief of appellants Eu, Sec. of St. of CA, et al. filed.
15	Jul 1 1988		Joint appendix filed.
17	Jul 12 1988		Order extending time to file brief of appellee on the merits until September 3, 1988.
18	Sep 2 1988		Brief of appellees San Francisco County Democratic Central Committee, et al. filed.
20	Sep 2 1988	G	Motion of Libertarian National Committe for leave to file a brief as amicus curiae filed.
19	Sep 13 1988		CIRCULATED.
21	Sep 28 1988	G	Application (A88-250) to extend the time to file a reply brief from October 2, 1988 to October 15, 1988, submitted to Justice O'Connor.
22	Sep 28 1988		Application (A88-250) granted by Justice O'Connor extending the time to file until October 10, 1988.

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Entry	Date	Note	Proceedings and Orders
23	Sep 30 1988		Set for argument. Monday, December 5, 1988. (4th case) (1 hr.)
24	Oct 11 1988	X	Reply brief of appellants Eu, Sec. of St. of CA, et al. filed.
25	Dec 5 1988		ARGUED.
26	Dec 12 1988		Motion of Libertarian National Committe for leave to file a brief as amicus curiae GRANTED. The Chief Justice and Justice Brennan OUT.

87-1269

No. .....

Supreme Court, U.S.
FILED
JAN 27 1988
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1987

MARCH FONG EU, Secretary of State of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; LEO HIMMELSBACH, District Attorney of Santa Clara County;

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JURISDICTIONAL STATEMENT AND VOLUME I OF THE APPENDIX

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QUESTIONS PRESENTED

The California Elections Code contains dozens of provisions pertaining separately to each of its ballot-qualified political parties and several which pertain to such political parties generally. Of these provisions, only those prescribing the membership of the state central committees of the California Democratic and Republican parties, the term of the chairpersons of the California Republican and Libertarian party state central committees and proscribing endorsement by state and county party central committees of candidates for the party's nomination for partisan office in the primary election were invalidated by the courts below.

Do these invalidated provisions constitute substantial and impermissible infringements on the First Amendment rights of the affected political parties and their members where the provisions reflect the policies of the parties, were enacted at their request and are necessary to enable them to enforce their policies in state courts.

Do these provisions constitute such infringements where a state provides the candidates of political parties with access to its general election ballot through means other than the primary election without regulation of the parties but reserves the privilege of state-conducted nomination elections and automatic access of candidates so nominated to the general election ballot to political parties which adhere to such provisions enacted to promote the state's interest in a stable and democratic system of government.

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October Term, 1986

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MARCH FONG EU, Secretary of State of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; LEO HIMMELSBACH, District Attorney of Santa Clara County;

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SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

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ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, which is set forth in volume I of the Appendix (I App.) hereto at pp. 2-41 is reported at 826 F.2d 814.[1]

The orders and judgment of the United States District Court for the Northern District of California are not reported. They are set forth at II App. 42-78.

JURISDICTION

March Fong Eu, Secretary of State of the State of California, John K. Van de Kamp, Attorney General of California, Leo Himmelsbach, District Attorney of the County of Santa Clara, and Arlo Smith, District Attorney of the City and County of San Francisco, the appellants, appeal from the final judgment of the United States Court of Appeals for the Ninth Circuit, filed Augsut 18, 1987 and amended October 29, 1987.

The judgment is subsequent to an order of this Court issued in this case on January 12, 1987, vacating the judgment of the Ninth Circuit and remanding to it for further

1. Appellants have reproduced the appendix of their original appeal to this Court in this case (Docket # 86-434) as volume II of the appendix to this appeal (II App.). Volume II is bound separately from this jurisdictional statement but volume I is bound herewith. The original appeal resulted in an order of this Court issued January 12, 1987, vacating the judgment of the Court of Appeals and remanding the case for further consideration in light of *Tashjian v. Republican Party of Connecticut*, 479 U.S. —, 107 S.Ct. 544 (1986).

consideration in light of this Court's decision in *Tashjian v. Republican Party of Connecticut*, 479 U.S. —, 107 S.Ct. 544 (1986). The judgment of the Ninth Circuit reaffirms its previous judgment affirming summary judgment entered by the United States District Court for the Northern District of California on April 16, 1984.

The judgment of the Northern District held that provisions of the California Elections Code prescribing the membership of the state central committees of the California Republican and Democratic parties, the terms of the chairpersons of the state central committees of the California Libertarian and Republican parties and prohibiting endorsements by state and county central committees of primary ballot-qualified political parties of candidates for their respective party's nominations at the primary election violated the Freedom of Speech and Free Association Clauses of the First Amendment of the United States Constitution, as applied to the states through the Fourteenth Amendment, and 42 United States Code section 1983, were therefore invalid and enjoined appellants from enforcing said provisions.

The Court of Appeals had jurisdiction pursuant to 28 United States Code section 1291 and Federal Rules of Civil Procedure section 54(b). By order issued on October 29, 1987, the Court of Appeals denied appellants' petition for rehearing with suggestion for rehearing en banc. (I App. 5)

By order filed November 17, 1987, the Court of Appeals denied appellants' motion to stay issuance of its mandate pursuant to Rule 41(b), Fed. R. App. P. until

final disposition of an appeal to this Court. (I App. 61-62) Notice of appeal to this Court was filed with the Clerk of the United States Court of Appeals for the Ninth Circuit on November 19, 1987 and an amended notice of appeal was filed on January 14, 1988. (I App. 54-60) Appellants' application to Justice Sandra Day O'Connor for a stay of the mandate was denied on December 4, 1987, after consideration of the written opposition of appellees.

This appeal is being docketed in this Court within 90 days from the entry of judgment below. The jurisdiction of this Court is invoked pursuant to 28 United States Code section 1254(2).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

First Amendment, United States Constitution:

"Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble. . . .

Fourteenth Amendment, United States Constitution:

" . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 United States Code section 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . ."

California Elections Code sections:

8660, 8661, 8663, 8664, 8665, 8667 and 8669 (membership of the Democratic State Central Committee);

9160, 9160.5, 9161, 9161.5, 9162, 9163 and 9164 (membership of Republican State Central Committee);

9274 (term of chairperson of Republican State Central Committee);

9816 (applicable to term of chairperson of Libertarian State Central Committee);

11702 (prohibits endorsement by party state and county central committees of candidates for the party's nomination for partisan office at the primary elecion);

29102 (provides penalties for violations of laws relating to elections);

29430 (provides a penalty for claiming an endorsement as official candidate of political party in the primary election).

The text of the foregong provisions of the California Elections Code and provisions thereof which were challenged but not invalidated in this litigation are set forth in II App. 288 et seq. A chart summarizing all of the provisions of the Elections Code, not challenged or invalidated below, relating directly to the California Democratic Party is set forth at I App. 63 et seq.

STATEMENT OF THE CASE

As the opinion of the United States Court of Appeals for the Ninth Circuit in this case notes, at the turn of this century California adopted a direct primary election system "which transferred the power to nominate candidates from party organizations to the voters themselves." (I App. 11)

The system is "closed" in the sense that only voters who are officially registered with state election agencies as being affiliated with a particular party may vote the ballot of that party in the primary election conducted by the state for the nomination of the party's candiates for partisan office. (Cal. Elec. Code § 501) The candidate who receives the most votes in the primary election conducted for a party for a particular office is the only candidate who may be designated on the general election ballot as the candidate of that party for that office. (Cal. Elec. Code § 6610)

However, the state does not conduct primary elections for all political parties. Only those parties which meet criteria of demonstrable support among the voters of the state are eligible to have their nominating elections conducted by the state. (Elec. Code § 6430)

Political parties may choose not to avail themselves of the state-conducted primary elections to select their candidates for office. The state provides these parties with other means of placing their candidates on the general election ballot although the candidates' party affiliations do not appear on the ballot. Such parties are not subject to regulation by the state as political parties.

Voters are not required to declare their affiliation with a political party as a condition of voting in the general and non-partisan elections even if they are in fact affiliated with a political party. (Elec. Code § 501) A party whose members do not register with state election agencies as being affiliated with it does not qualify to have its nominating elections conducted for it by the state unless the party petitions the Secretary of State and makes a special showing of support among the electorate. (Elec. Code § 6430, subds. (b) and (c))

When a party chooses to become ballot-qualified it and its adherents lose their ability to determine who may be affiliated with them. In exchange for the state conducting the nominating elections for a political party, the state requires that all voters who choose to officially affiliate with the party be eligible to vote in the party's primary election (Elec. Code § 10200.5) and, with a demonstration of support from other such members of the party, become a candidate for the party's nomination in the primary election. (Elec. Code §§ 6495 & 6501).

Thus, a party which chooses to become ballot-qualified agrees to become a potential "umbrella" party and can fairly be said to aspire to that status by virtue of its choice to become ballot-qualified. An "umbrella" party seeks out and incorporates diverse and competing interests within its membership. California uses its electoral system to promote the existence of "umbrella" parties in furtherance of its interest in the stability of its political system because such parties are an effective device for mitigating "unrestrained factionalism [which] may do significant damage to the fabric of government" (*Storer v. Brown*, 415 U.S. 724, 736 (1974)).

The manner in which "umbrella" parties perform this function has been described in terms of the national Democratic and Republican parties (A. Ranney, *Curing the Mischiefs of Faction* 201 (1975)):

> "[E]ach party has sought winning coalitions by attempting accommodations among competing interests it hopes will appeal to more contributors and voters than will the rival accommodations offered by the opposition party. This strategy, it is conceded has resulted in vague, ambiguous, and overlapping party programs and in elections that offer the voters choices between personalities and, at most, general programmatic tendencies, certainly not unequivocal choices between sharply different programs. But this . . . is not a vice but a virtue, for it has enabled Americans through all but one era of their history to manage their differences with relatively little violence and to preserve the world's oldest democratic regime."

As Ranney's analysis indicates parties which aspire to "umbrella" status will be inclined to conduct their activities in a manner which contributes to the state's interest in stable government. Such parties will tend to have a coincidence of interest with the state and will therefore willingly and knowingly seek access to the primary election ballot for the very reasons that the state offers that opportunity. (See, Scott and Carr, "Political Parties Before the Bar: The Controversy Over Associational Rights", 5 Univ. of Puget Sound L. Rev. 267, 276-279 (1982).)

In opting to participate in the primary election as it exists in California, a party knowingly and willingly surrenders its perogative to determine its own membership and in effect chooses to permit its identity to be determined democratically by vote of all persons who simply officially associate with it (Elec. Code § 501) for whatever reason (Scott and Carr, *supra*, at 278):

> "Thus, the primary election provides insight into the policy objectives of the party as a whole. Party candidates for elective office are presumed to represent the wishes of the majority of the party on a wide range of political issues. These candidates, in other words, are not just candidates for elective office in the general election; from the standpoint of intraparty politics, they represent the party position on issues that concern party identifiers."

In effecting this result, the primary election system not only promotes the state's interest in the stability of its governmental system but the related and, as this Court has recognized (*American Party of Texas v. White*, 415 U.S. 767, 781, ftn. 15 (1974)), separate interest in the "democratic management of the political party's internal affairs".

These interests of the state and the self-interest of political parties which aspire to the status of an "umbrella" party coalesce and coincide in California's closed primary system and its implementing statutes which affect the ballot-qualified political parties. These statutes manifest the symbiotic relationship between ballot-qualified political parties and the state. As this Court noted in *Anderson v. Celebrezze*, 460 U.S. 780, ftn. 30 at 803 (1983), " . . . the drafting of election laws is no doubt largely the handiwork of the major parties that are typically dominant in state legislatures . . . ".

The evolution of the statutory ban on endorsements by central committees of ballot-qualified parties of candidates for their parties' nominations in the primary election (Elec. Code § 11702) illustrates the coincidence of in-

terest and symbiotic relationship between the state and ballot-qualified parties.

Prior to the adoption of a primary election system in California around the turn of the century, the major political parties prohibited their central committees from endorsing candidates for their parties' nominations at their conventions. (II App. 142-3) The reason for this prohibition was that the committees organized and put on the party nominating conventions so that official endorsements by the committees would impair the legitimacy and credibility of the conventions and the candidates chosen thereby in the eyes of backers of losing candidates with obvious negative effects on the party's prospects in the general election. (II App. 146-7)

After the advent of the primary election system, the central committees existed primarily to carry on their *parties'* campaigns for their candidates chosen at the primary election. (II App. 145-6) This role of the central committees was valuable to the parties because it provided a vehicle for securing resources for the election of the nominees available from candidates who were defeated in the primaries and their backers which might not otherwise be available directly to the nominees themselves. (II App. 107-8) The prohibition on endorsements of candidates by central committees continued to be the practice of the California Republican and Democratic parties because such activity could impair or preclude the effectiveness of the central committees in their role as catalysts of party cohesiveness for the general election. (II App. 107-10)

Eventually the existence of party central committees was established in statutes which recognized that virtually their only function was to conduct their parties' campaigns for their nominees in the general election. (II App. 144) The prohibition on endorsements continued as a matter of the policy and practice of the parties and was viewed by state officials and party organizations as being consistent with the primary election system and the best interests of the parties. (II App. 107-10)

The policy of the ban on endorsements by central committees was not expressly adopted by statute until 1963 when it was enacted as part (§ 11702) of the Truth in Endorsements Law. (Elec. Code § 11700 et seq.) This statute prohibits publications appearing to endorse candidates for the nomination of a ballot-qualified party in primary elections that utilize identifying words contained in the name of the party unless a prescribed statement that the "endorsement hereon is by an unofficial political group" appears on or in the endorsement publication. (Elec. Code §§ 11703-5, 11708-9)

The statute was enacted to combat a widespread practice of particular organized factions within the ballot-qualified parties of publishing slates of endorsements which misled voters into believing the endorsements had been made by official party organizations. (Elec. Code § 11701(3)) This practice is considered a fraud because in California the primary election is the means the ballot-qualified parties have chosen to "endorse" their candidates and pursuant to that choice central committees of such parties had never endorsed candidates for their

parties' nominations. (See, *People v. Crutcher*, 262 Cal. App.2d 750, 752-753; 68 Cal.Rptr. 904 (1968).)

The California Democratic and Republican parties had witnessed the evolution of unofficial associations of party members, such as the California Democratic Council (CDC) and the California Republican Assembly (CRA), for the purpose of endorsements in the primary elections, their identification with well organized ideological factions within the parties and the detrimental effect that identification had on the fate of the parties' nominees in the general election. (See, *Dancing Bear: An Inside Look At California Politics*, by Gladwin Hill, (World Publishing Co. 1968) pp. 160-161, 211-212, 217-218, 248, 252, 254-255.)

The introduction of such a dynamic into the central committees was and is clearly perceived by the parties as inconsistent with and destructive of the role of the central committees and of the parties (*Dancing Bear*, *supra*, at pp. 160-1):

> "As the purported voice of party rank-and-file, serving as a power base for office-seekers and office-holders, the CDC claimed the right to a major role in formulating party policy. This pretension quickly became a bugbear, both to the party's 'legal' hierarchy, concerned with unifying a membership that extended far beyond the 50,000 CDC activists, and to the office-holders. For an office-holder, CDC pronouncements tended to commit him to controversial positions and reduce his most valuable asset as a politician—the flexibility to maneuver."

Appellants believe that the Democratic and Republican parties manifested in both the official organizations and in the Legislature caused the Truth in Endorsements Law,

including the ban on endorsements by central committees, to be enacted to enable the parties to enforce their own policies as to proper methods of determining their identities.[2] Such policies probably could not be enforced by the party and its members in state court in the absence of the statutes. (Cf. *Malone v. Superior Court*, 40 Cal.2d 546, 551-552; 254 P.2d 517, 520 (1953).)

Elec. Code § 11702 has the effect of limiting all members of a ballot-qualified political party to one *official* nominating act—their vote in the primary election. In causing enactment into statute of this restriction, the parties invoked the state's interest "'of confining each voter to a single nominating act'" (*Tashjian*, *supra*, 107 S.Ct. 544, fnt. 13 at 554). As a result of this restriction, the vote of each party member has equal influence in the choice of the party's candidates and the policy determinations reflected therein. Moreover, the equality of influ-

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2. Defendants submitted a declaration pursuant to Federal Rules of Civil Procedure, Rule 56(f) regarding the need for discovery to respond to plaintiffs' voluminous motion for summary judgment concerning the issues of substantial infringement and standing. (II App. 114-124) Defendants intended to conduct extensive discovery from the records of retired legislators and the state and county central committees to document the role played by the parties in enacting the Truth In Endorsements Law, including the ban on endorsements, and the current policy of the state central committees on the issue of pre-primary endorsements. (*Id.*) The District Court acknowledged that defendants could not conduct formal discovery in response to the motion within the accelerated motions schedule it had set in anticipation of the June, 1984 primary elections but failed to permit such discovery to proceed after hearing argument on summary judgment. (II App. 232-234) The Court of Appeal acknowledged that the preclusion of discovery was prejudicial in a partial remand to the District Court on May 25, 1984. (II App. 87) However, the remand order did not permit proceedings on these issues.

ence enhances the acceptability of the nominees within the party and party cohesiveness for the general election.

These effects coincide with the state's interests in the stability of its political system and in the democratic management of the internal affairs of ballot-qualified political parties (*American Party of Texas v. White*, *supra*, 415 U.S. at ftn. 15, p.783; see also, Scott and Carr, *supra*, at 279) which are inherent in its direct primary election system.

The parties have also caused the portions of the by-laws of their state central committees pertaining to the composition of those committees and the terms of their chairpersons to be enacted into law. (II App. 106) The existence of these statutes enables the party and its membership to enforce the by-laws in state court as noted *supra*, to settle credentials disputes. Utilization of a neutral arbiter of credentials disputes mitigates potential divisiveness within the state central committee which could interefere with its role in uniting the party for the general election.

The parties' interests in stability coincide with the interests of the state. The absence of power to enforce this mitigating capability in court reduces or eliminates this mutual benefit. The judgment of the Court of Appeals eliminates that power.

The statutes concerning the structure of the state central committees reflect the by-laws of those committees and are enacted as requested by a party represented in the Legislature without interference from the other party as a matter of comity and custom. (II App. 106) The statutes regarding the composition of the state central committees of the different parties vary significantly in

accordance with the by-laws of each committee although they follow a similar pattern. (II App. 149-231)

The provisions regarding the terms of the chairpersons of the state central committees have a similar feature which reflects the state central committees' accommodations in their by-laws to a perennially significant phenomenon in California politics (*Dancing Bear*, *supra*, at 23-24):

> "Only nine years after California embarked on statehood, the problems of holding it together as a state seemed insuperable. The legislature voted to separate its northern and southern portions into two states, and enactment was duly signed by Governor John B. Weller on April 19, 1859. Only Congress' preoccupation with the impending Civil War prevented the necessary Federal ratification. And to this day the essential existence of two Californias, northern and southern, is formally recognized in a number of state laws drawing explicit sectional distinctions."

Each of them alternates the occupancy of the chair between representatives of Northern and Southern California (Cal. Elec. Code §§ 8774, 9724 and 9816) in the interests of avoiding sectional identification of the party and unnecessary conflict within the committee which could impede its role of unifying the party. This interest of the parties coincides with the state's interest in promoting by statute the duty of the state central committees to carry out their parties' campaigns for their nominees in the general election[3] the imposition of this duty by statute is

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3. The state central committees are mandated by statute to "conduct campaigns for this party and in behalf of the candidates of the party" and this is virtually the sole duty mandated by statute to these committees (I App. 12). (Elec. Code

(Continued on following page)

not challenged in this litigation. (Cf. *Marchioro v. Chaney*, 442 U.S. 191, 196-197 (1979).)

Plaintiffs associated as the National, Northern and Southern California Committees for Party Renewal, purportedly including six Democratic county central committees and one Republican county central committee out of a total of 58 county committees for each party, filed the first amended complaint in this action on or about December 3, 1983. (II App. 243-284) Neither the Republican nor Democratic state central committees or officers thereof are parties to this litigation.

At the time the litigation was filed and during its course through the completion of proceedings in the Ninth Circuit, none of the statutes invalidated as a result of the judgment of the Court of Appeals conflicted with the by-laws of the California Democratic, Republican and Libertarian state central committees. (I App. 18) Notwithstanding the efforts of the Committee for Party Renewal for two years prior to the filing of the complaint, its members were apparently unsuccessful in persuading the Republican and Democratic state central committees that the statutes invalidated in this litigation were not in the best interests of their parties.

When stay of the mandate of the Court of Appeals was denied by that body and by Justice O'Connor official

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(Continued from previous page)

§§ 8776 (Democratic Party); 9276 (Republican Party); 9688 (American Independent Party); 9819 (Peace and Freedom Party). Elec. Code §§ 8940, 9440, 9740 and 9850 mandate county central committees in similar language:

"A committee shall have charge of the party campaign under general direction of the state central committee or of the executive committee selected by the state central committee."

action was taken within both the Republican and Democratic state central committees to attempt to restore protection of the parties lost by the invalidation of Elections Code § 11702.

The rules committee of the Republican state central committee is considering submission to the full committee of proposed additions to the by-laws to prohibit pre-primary endorsements by any party central committee. (I App. 70-74)

The executive board of the Democratic state central committee has adopted additions to the by-laws which virtually prohibit pre-primary endorsements by party county central committees. (I App. 75-86)

Members of county central committees are elected by members of their party at primary elections conducted by the state. (See e.g., Elec. Code § 8870 et seq.) Their election obligates them to carry out the function and purpose of the committee which is, under the general direction of the state central committee, to conduct their party's campaign for its nominees for partisan office selected at the primary election.[4] (Cal. Elec. Code §§ 8940, 9440, and 9850.)

The derivative obligation not to endorse, support, or oppose candidates is the traditional limitation on the authority of central committees in California party politics that is enforceable by party members through the existence of Elec. Code section 11702. County central committee mem-

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4. Although members of central committees are elected at the June primary election, they typically do not assume their duties until January of the following year so that the committee in existence at the primary conducts the party's campaign at the November general election. (Cal. Elec. Code, §§ 8920 [Democratic]; 9420 [Republican].)

bers are elected knowing and on the condition that as a committee they will not endorse, support, or oppose candidates for their party's nomination in the primary election. Party members elect county central committees with reservation to themselves at the primary election of the prerogative of identifying the party's nominees.

Neither state central committee has adopted any amendments to its by-laws changing its composition or the terms of its chairpersons to the best of appellants' knowledge.

Notwithstanding the appellants' presentation of the information reiterated herein insofar as it existed prior to its judgment, the Ninth Circuit affirmed the summary judgment entered by the District Court invalidating these statutes.

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FEDERAL QUESTIONS ARE SUBSTANTIAL

This Court vacated the judgment of the Ninth Circuit invalidating these statutes and remanded for further consideration in light of its decision in *Tashjian*, *supra*, 479 U.S. —, 107 S.Ct. 544 (1986).

In *Tashjian* this Court held that a Connecticut statute which precluded independent voters from participating in the primary elections to determine the nominees of the political parties for certain offices was invalid as applied to the Connecticut Republican Party.

Application of the statute to the Republican party was invalid because it conflicted wtih a rule adopted by the party in convention permitting the participation of independent voters in primary election of party nominees for certain offices.

The governmental interests cited by the state for the Democratically controlled state legislature's refusal to enact an exception to the statute introduced by Republican members to allow implementation of the rule were held insufficient to justify the resulting substantial burden it placed on the right of the party and its members protected by the First Amendment to choose with whom they will associate in their quest for political success.

Nothing in the holding of *Tashjian* establishes that the statutes invalidated in this case constitute an impermissable burden on the First Amendment rights of the plaintiffs in this litigation or of the California Republican, Democratic and Libertarian parties.

None of the invalidated statutes conflicted with the rules of the state central committees of the three political parties affected by this litigation while it was pending in the courts below. Moreover, on the record in this case the parties can fairly be said to have chosen the policies reflected in the invalidated statutes as their own in pursuit of their own interests.

The interests set forth in justification of the invalidated statutes are different from the interests cited by Connecticut in defense of its statutes in *Tashjian* and have been recognized as compelling by this Court. The interests in the stability of its governmental system and the democratic management of the internal affairs of its ballot-qualified parties, relied upon by California in this case, were not cited by Connecticut in support of its statutes.

California's primary election system permits any elector who has registered with election officials as being affiliated with a ballot-qualified political party to vote the

ballot of that party in the primary election. The party cannot disaffiliate or prevent any such elector from participating in the selection of the party's nominees which is accomplished exclusively in the primary election. The state's right to impose this restriction on its ballot-qualified political parties is not challenged in this litigation.

Through this primary election system California promotes the development of "umbrella" parties which become an instrument of its interest in a stable governmental system. This Court has characterized this interest as compelling in the context of First Amendment analysis of political rights. (*Storer v. Brown, supra*, 415 U.S. at 736) Moreover, this primary election system promotes the state's strong and legitimate interest in establishing democratic management of the internal affairs of ballot-qualified political parties (*American Party of Texas v. White, supra*, 415 U.S. at ftn. 15, p.783).

The invalidated statutes apply only to ballot-qualified parties and exist to promote the compelling interests which underly the state's primary election system. Ballot-qualified parties have essentially chosen that status and the state regulations associated with it as being in their best interests.

California permits political parties to avoid that status and the associated regulation but still qualify its candidates for the general election ballot through independent candidacies (Elec. Code § 6400 et seq.) or write-in procedures. (Elec. Code §§ 17100-1). There is no requirement in the U.S. Constitution that a state elect its governmental officials through methods other than these.

When a state chooses to conduct nominating elections for political parties and provide automatic access to and identification on the general election ballot for candidates of the parties, it may establish conditions to this privilege so long as the conditions do not invidiously discriminate among the political parties. (*American Party of Texas v. White, supra*, 415 U.S. at 780-1) Since the invalidated statutes operate in the same manner with respect to any party which chooses to become ballot-qualified, such a consideration would not be present in this case.

It is the choice of the party whether its interests are best served through participation in the state's primary election system with its associated regulation of ballot-qualified parties or through use the of the other methods available to qualify its candiates for the ballot which keep it free of state regulation.

The parties affected by this litigation have opted for the state regulated system. With the possible exception of the state Libertarian party, which has it within its power to opt out of the state regulated system, none of them is a party to this litigation.

Through the intervention of the lower courts in this case, political rights and opportunities provided to rank and file members of ballot-qualified parties by the invalidated statutes have been peremptorily removed without their participation or the participation of those with a clear and legitimate claim to represent them.

The practicalities of political life in California are such that if the membership of the parties, especially the Democratic and Republican parties, want the changes advocated by plaintiffs, the challenged statutes will be in

all likelihood amended or repealed accordingly (*Dancing Bear, supra*, p. 263):

> " . . . as of 1967, party fragmentation made a revival of 'volunteer' movements problematical for the immediate future. Party leaders spoke of trying to develop rank and file organization [for purposes, *inter alia*, of making pre-primary endosements] under the wing of official party structures. But to do that called for a change in the laws, which couldn't be brought about very well until a lot of rank and file opinion was already mobilized." (Bracketed comments added)

By precluding the political parties from effectively expressing their views before invalidating these statutes, the lower courts have ignored this court's admonition reiterated in *Tashjian, supra*, 107 S.Ct. at 554:

> "And as is true of all expressions of First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational."

Thus, none of the indicia of an impermissable burden on the First Amendment rights of political parties and their members explicated in *Tashjian* is present in this case. California's long standing and successful regulation of its ballot-qualified political parties should not be jeopordized through First Amendment analysis which goes beyond *Tashjian* without plenary review by this Court.

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CONCLUSION

For the reasons presented above probable jurisdiction should be noted and the Court should set the matter for plenary consideration.

DATED: January 27, 1988

Respectfully submitted,

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FOR PUBLICATION

In the United States Court of Appeals
FOR THE NINTH CIRCUIT

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Plaintiffs-Appellees,

v.

MARCH FONG EU, Secretary of the State of California, JOHN VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County, et al.,

Defendants-Appellants.

No. 84-1851
D.C. No.
C-83-5599-MHP
ORDER AND
AMENDED
OPINION

On Remand from the United States Supreme Court

Filed August 18, 1987
Amended October 29, 1987

Before: Eugene A. Wright, Otto R. Skopil, Jr. and William A. Norris, Circuit Judges.

Opinion by Judge Norris

SUMMARY

Constitutional Law/Elections

On remand from the Supreme Court. District court grants of summary judgment affirmed.

This action arises from a challenge of sections of the California Elections Code (Code) which deal with state and county central committees of ballot-qualified political parties. Appellees, various groups active in California partisan politics and various members of party central committees, filed suit for injunctive and declaratory relief seeking to vindicate their first amendment rights. The district court ruled, inter alia, that the Code's ban on pre-primary endorsements by state and county central committees and its prescribing the membership of state central committees and the term of their chairs, violated the first amendment. This court's decision affirming the district court's rulings was vacated by the Supreme Court. The Court then remanded the case to this court for further consideration in light of a recent Supreme Court decision.

[1] The threshold arguments raised by the state are unpersuasive. [2] The Supreme Court has found justiciability notwithstanding a record of non-enforcement because the record did not show that the statutes had been commonly and notoriously violated. [3] Standing cannot be

defeated because no state central committee currently has by laws that conflict with the challenged statutes. [4] The Supreme Court has nowhere suggested that the adoption of a conflicting bylaw was necessary to confer standing or to show infringement of a first amendment right. [5] The eleventh amendment does not bar an action seeking prospective relief from enforcement of an unconstitutional statute. [6] The state does not advance an interpretation of the Code that would moot the constitutional questions raised by appellees. [7] Finally, even if the Code expressly characterized the committees as public agencies, this court rejects the premise that a state can strip a voluntary political association of first amendment rights by legislating it into an arm of the state.

[8] It is the right of the party, not the state, to decide how the party should be governed. [9] When the state restricts a party's freedom to choose its leadership, the state burdens the party's first amendment rights. [10] The Code intrudes directly on internal party affairs by dictating who can serve on the various state central committees. [11] Underlying the state's position seems to be a paternalistic assumption that, left to their own devices, parties will act in a manner adverse to their own interests. [12] Moreover, any state regulation of political parties beyond that necessary to further orderly elections must be viewed with great skepticism. [13] In short, a state's interest is in orderly elections, not orderly parties, and it may regulate political parties only as an incident to regulating elections. [14] Therefore, no compelling state interest is served by the Code's provisions regulating the membership of party committees and limiting the terms of committee chairs. [15] Moreover, the state has failed to

carry its burden of showing a substantially relevant correlation between the governmental interest asserted and the Code's provisions.

[16] Similarly, the state has no legitimate interest in protecting parties from the disruption that the state argues will result if parties are free to make preprimary endorsements. [17] The state has made no showing that banning preprimary endorsements sufficiently advances the interests in party cohesion to justify an outright prohibition on political speech. [18] Prohibiting the governing body of a political party from supporting or opposing candidates patently infringes both the right of the party to freely express itself and the right of party members to an unrestricted flow of political information. [19] The state's argument that preprimary endorsements confuse and unduly influence voters rests upon a lack of trust in the ability of voters to think and act for themselves.

COUNSEL

Geoffrey L. Graybill, Sacramento, California, for the defendants-appellants.

James J. Brosnahan, Cedric C. Chao, Paul R. Dieseth, Paul Flum, Morrison & Foerster, San Francisco, California, for the plaintiffs-appellees.

ORDER

The Court's opinion, filed on August 18, 1987, is hereby amended as follows:

The following footnote is added at the end of the first sentence on page 16 of the slip opinion:

> On appeal, the state has also raised the question whether the various appellee central committees have actually authorized participaton in this litigation. The district court ruled that the state waived the issue of capacity to sue by failing to comply with Rule 9(a), Fed. R. Civ. P., and by failing to raise the question on summary judgment. Order Following Remand, June 1, 1984. The district court also ruled that the state had failed to challenge declarations establishing authorization to bring suit. *Id. See, e.g.*, Declaration of Mary Gingell, member of the Executive Committee of the State Central Committee of the Libertarian Party of California. VII Appendix to Appellants' Emergency Motion for Stay on appeal, at 934. We see no reason to disturb these rulings on appeal.

The panel, as constituted above, has unanimously voted to deny the petition for rehearing. Judge Wright expresses no opinion on the suggestion for rehearing en banc, Judge Skopil recommends that it be rejected, and Judge Norris votes for rejection of the same.

The full court has been advised of the suggestion for en banc rehearing and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is DENIED, and the suggestion for a rehearing en banc is REJECTED.

OPINION

NORRIS, Circuit Judge:

This case involves a First Amendment challenge to various sections of the California Elections Code. The challenged sections specify the membership of the state central committees of ballot-qualified political parties and the term of office of committee chairs, and prohibit both state and county central committees from endorsing candidates in party primaries.

Plaintiffs are various county central committees of the Democratic and Republican parties, the state central committee of the Libertarian party, members of these and other party central committees, and various other groups and individuals active in partisan politics in California. They sued the Secretary of State and Attorney General of California and the district attorneys of various counties (hereinafter "the State") for declaratory and injunctive relief under 42 U.S.C. § 1983 seeking to vindicate their asserted First Amendment right to endorse candidates running in California's direct primary elections and to structure and conduct the internal affairs of their respective political parties free of unjustified interference by the state.[1]

In the first count of their first amended complaint, plaintiffs challenge the constitutionality of Cal. Elec. Code § 11702, which prohibits state and county central committees from endorsing, supporting, or opposing candidates for partisan office in direct primary elections. Plaintiffs' second count challenges sections of the Elections Code and the state constitution that prohibit central committees from endorsing candidates in nonpartisan county, city and school elections. Plaintiffs' third count challenges Code sections that prescribe the membership of state central committees, the term of office of state committee chairpersons, the time and place of state and county central committee meetings, and the dues to be paid by county committee members.

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[1]The First Amendment is made applicable to the states through the Fourteenth Amendment. *See, e.g., Edwards v. South Carolina*, 372 U.S. 229, 235 (1963); *Schneider v. State*, 308 U.S. 147, 160 (1939).

Plaintiffs moved for summary judgment on all three counts. In response, the State moved to dismiss the amended complaint under Fed. R. Civ. P. 12(b)(1) and (6) and cross-moved for summary judgment. The district court granted summary judgment on plaintiffs' first count, ruling that section 11702's ban on preprimary endorsements violated the First Amendment. The court stayed all proceedings on plaintiffs' second count under the abstention doctrine of *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941). The court granted partial summary judgment on plaintiffs' third count, ruling that the sections prescribing the membership of state central committees and the term of their chairs violated the First Amendment.[2] The court, however, denied plaintiffs' motion for summary judgment with respect to those Code sections regulating the time and place of committee meetings and county committee dues. The court also denied in all respects the State's motion to dismiss and cross-motion for summary judgment. Although the district court did not finally dispose of all issues with respect to all parties, it directed the entry of final judgment for plaintiffs under Fed. R. Civ. P. 54(b) on the first count and as to those claims in the third count decided in plaintiffs' favor. Ac-

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[2]The district court invalidated the following sections: Cal. Elec. Code §§ 8660, 8661, 8663—67, 8669 (Democratic State Central Committee); §§ 9160, 9160.5, 9161, 9161.5, 9162—64 (Republican State Central Committee) (West Supp. 1984); 9274 (Republican State Central Committee Chairman); and § 9816 (Peace & Freedom State Central Committee Chairperson) (West 1977).

cordingly, we have appellate jurisdiction under 28 U.S.C. § 1291 (1982).[3]

In *San Francisco County Democratic Central Committee v. Eu*, 792 F.2d 802, 820 (9th Cir. 1986), we affirmed the district court's judgment granting summary judgment to plaintiffs. Our judgment was, however, vacated by the United States Supreme Court, which remanded the case to this court "for further consideration in light of *Tashjian v. Republican Party of Connecticut*, 479 U.S. —, 107 S. Ct. 544, 93 L.Ed.2d—(1986)." *Eu v. San Francisco County Democratic Committee*, 107 S. Ct. 864 (1987). Having considered the matter further after supplemental briefing by the parties, we conclude that *Tashjian* supports our previous decision and accordingly reinstate our judgment affirming the district court for the reasons set forth in this modified opinion.

I

Plaintiffs contend that California's political parties and their governing bodies—the state and county central committees—are voluntary associations entitled to the full protection of the First Amendment. They argue that California's prohibition of preprimary endorsements and the state's regulation of party structure and internal affairs abridge their freedom of political expression and association.[4] In response, the State argues that the state and county central committees of ballot-qualified political parties in California do not enjoy First Amendment status because they are public entities, not private associations. In the alternative, the State argues that the challenge provisions of the Election Code pass First Amendment muster because they are narrowly drawn statutes that serve compelling state interests.

[3]We review a summary judgment *de novo*. *Lojek v. Thomas*, 716 F.2d 675, 677 (9th Cir. 1983). Summary judgment is appropriate if "there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(b). We also review *de novo* the district court's denial of the State's motion to dismiss under Fed. R. Civ. P. 12(b)(1) & (6) for want of subject matter jurisdiction and for failure to state a claim upon which relief may be granted. *See, e.g., Trerice v. Pedersen*, 769 F.2d 1398, 1400 (9th Cir. 1985).

"Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association." *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957). Because "[e]xercise of these basic freedoms . . . has traditionally been through the media of political associations," *id.*, political parties as well as individual party adherents enjoy First Amendment rights. *See Tashjian v. Republican Party of Connecticut*, 107 S. Ct. 544, 548-49 (1986); *Democratic Party v. Wisconsin ex rel. La Follette*, 450 U.S. 107 (1981); *Cousins v. Wigoda*, 419 U.S. 477 (1975).[5] Moreover, " '[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.' " *Tashjian*, 107 S. Ct. at 549 (quoting *Sweezy*, 354 U.S. at 250).

[4]Plaintiffs also claim that the State's regulation of ballot-qualified parties violates their rights to equal protection of the laws under the Fourteenth Amendment. It is unnecessary to reach this claim.

[5]*See also* Weisburd, *Candidate-Making and the Constitution: Constitutional Restraints on and Protections of Party Nominating Methods*, 57 S.Cal.L.Rev. 213, 265 (1984) [hereinafter Weisburd, *Candidate-Making and the Constitution*] ("parties as parties have associational rights").

Thus, courts have "placed the internal workings of a political party squarely within the protection of the First Amendment." *Ripon Society Inc. v. National Republican Party*, 525 F.2d 567, 586 (D.C. Cir. 1975), *cert. denied*, 424 U.S. 933 (1976).

In this case we must apply these settled First Amendment principles to the restrictions imposed on California political parties by various provisions of the California Elections Code. To place the important constitutional questions presented by this appeal into perspective, we will first provide an overview of state regulation of political parties in California.

Like our national political parties,[6] California's political parties were originally unregulated voluntary associations of individuals "governed largely by custom and usage." *Unger v. Superior Court*, 37 Cal.3d 612, 615, 692 P.2d 238, 209 Cal. Rptr. 474 (1984) (*Unger II*); *see also* 59 Ops. Cal. Atty. Gen. 60 (1976); 23 Ops. Cal. Atty. Gen. 119, 120 (1954) (citing *Spelling v. Brown*, 122 Cal. 277, 279, 55 P. 126 (1898)). These voluntary associations "fix[ed] membership criteria, nominat[ed] candidates for public office, conduct[ed] their campaigns, and shap[ed] their platforms" with neither recognition nor interference from the state. Friedman, *Reflections Upon the Law of Political Parties*, 44 Cal. L. Rev. 65, 66 (1956); *see also*

[6]See, e.g., *O'Brien* v. *Brown*, 409 U.S. 1, 4 (1972) (per curiam) ("our national political parties first came into being as voluntary associations of individuals"); see also A. De Tocqueville, 2 *Democracy in America* 129 (Bradley, ed. 1954); D. Broder, *The Party's Over: The Failure of Politics in America* 172 (1971).

Spier v. Baker, 120 Cal. 370, 380, 52 P. 659 (1898). Internal party decisions were generally made at party conventions where choices as important as "who shall represent [the] party on the election day ballot [were] left exclusively to a select group of its leaders." J. Owens, E. Costantini & L. Weschler, *California Politics and Parties* 78 (1970) [hereinafter, "*California Politics*"]. At the turn of the century, Progressive Republicans, led by Hiram Johnson, set out to replace the prevailing laissez-faire regime with one ostensibly designed to democratize and purify the parties by rescuing them from the stranglehold of wealthy special interests.[7] *See Assembly Interim Committee on Elections and Reapportionment*, Report on Political Party Organization 7, *reprinted in* 1 Appendix to Journal of the Assembly (1963).

Spurred on by the Progressive reformers, the state legislature took the first—and most fundamental—step toward democratizing political parties by enacting a direct primary law, which transferred the power to nominate candidates from party organizations to the voters themselves. *See Hart v. Jordan*, 168 Cal. 321, 143 P. 537 (1914); *Katz v. Fitzgerald*, 152 Cal. 433, 93 P. 112 (1907); *see also California Politics*, *supra* at 35. As part of the same reform movement (*see* Opinion, Legislative Counsel of California, February 23, 1978. Excerpt of Record 465), the California legislature required political parties to form

[7]The most notorious special interest and the chief impetus to reform was the Southern Pacific Railroad Company, nicknamed "the Octopus" because of its allegedly ubiquitous corrupting influence on state government. *California Politics*, *supra* at 32. According to one commentator, the Southern Pacific "literally ran the state's politics." *Id.* at 31.

state and county central committees and adopted rules for party governance.[8]

The Elections Code provisions regulating party governance are byzantine in their complexity[9] and vary in extent and detail from party to party. *See, e.g.*, Cal. Elec. Code §§ 8500—8945 (Democratic Party), 9000—9510 (Republican Party), 9600—9745 (American Independent Party), 9750—9855 (Peace and Freedom Party). To take the Democratic Party as an illustration, the Code establishes party central committees at the county, *id.* § 8820, and state-wide levels, *id.* § 8660; it dictates the size, membership, and apportionment of these committees, *id.* §§ 8660—8672 (state committee), 8820—8834 (county committees); it mandates the place and time of [illegible], *id.* §§ 8710—8711, 8920—8922; it enjoins [illegible]al committee to observe standard parliamentary procedure, *id.* § 8778; and it provides for the election of a state chair and vice-chair and requires that they be selected alternately from the northern and southern sections of the state. *Id.* § 8774.

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[8]The political reforms that the Progressives wrote into California law during the first two decades of this century parallel laws adopted in other states. Between 1890 and 1920, most states adopted "elaborate legal codes closely regulating the state parties' internal affairs: the codes generally stipulated what committees and conventions the parties must have, the procedures by which their members are selected, who may participate in making the parties' decisions, and what powers, if any, each party organ has over the others." A. Ranney, *Curing the Mischief of Faction: Party Reform in America* 18 (1975). For a thorough catalogue of the reform measures implemented in the other states, see J. Starr, *The Legal Status of American Political Parties I*, 34 Amer. Pol Sci. Rev. 439 (1940).

[9]See Friedman, *supra* at 71 (describing the laws governing the parties as "an illogical, disordered pattern").

Most importantly, the Elections Code assigns to each party's state central committee the "statutory function of party leadership" by placing it "at the very helm of the party's general election campaign." 23 Ops Cal. Atty. Gen. 119, 123 (1954); *see* Cal. Elec. Code §§ 8776,8940.[10] Similarly, the Code provides that the county committees "shall have charge of the party campaign under general direction of the state central committee." *Id.* §§ 8940 (Democratic Party), 9440 (Republican Party), 9740 (American Independent Party), 9850 (Peace and Freedom Party). Hence, at least in theory, the central committees constitute the governing bodies of the parties.

In practice, commentators have noted that the statutory organization of the central committees is so cumbersome as to make only titular leadership realistically possible.[11] *See California Politics*, *supra* at 190-91. For example, the Democratic state central committee is composed of over 1,000 members—more than five times the size of the State Convention. *Id.* at 191. The member-

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[10]See Friedman, *supra* at 69 ("[i]n statutory contemplation California party organs have been left with one major role—to campaign for the general election success of the party nominees selected by the voters at the primary"); *see also* 23 Ops. Cal. Atty. Gen. 119, 121-23 (1954).

[11]The separate Elections Code provisions prescribing the membership of the Republican, American Independent, and Peace and Freedom central committees differ in some respects from the Democratic Party provisions. See, e.g., Cal. Elec. Code §§ 9000—9510 (Republican Party). For instance, Elections Code §8774 requires that the chairperson of the Democratic Party state central committee serve a single term to be fixed by party by-laws and that the chair alternate between residents of northern and southern California. Section 9274 duplicates the north-south rotation requirement of section 8774 but specifies a fixed term of two years for the Republican Party chair.

ship includes all Democratic officeholders from Governor to members of the Congress and the state legislature. Cal. Elec. Code § 8660(a). Each state-wide officeholder,[12] United States Senator and state senator appoints three other state committee members, "at least two of whom shall be of the opposite sex"; and each member of Congress and the State Assembly appoints two other members, "at least one of whom shall be of the opposite sex." *Id.* § 8663. Defeated party nominees for these offices also serve on the committee and appoint their share of additional members. *Id.* § 8661. Rounding out the membership are members elected by the county committees on a basis proportionate to registered party strength in each county, *id.* §§ 8660(b), 8667; five members elected by a caucus convened in each assembly district, *id.* § 8660(g) & 8669; and miscellaneous others.[13]

Thus, the legislative design favors elected officials over party members who do not hold elective office. The design particularly favors incumbent state legislators, who enact and amend the legislation regulating party affairs. Members of the California State Assembly and Senate can control as many as 400 positions; in comparison, the

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[12]The state-wide officeholders are the Governor, the Lieutenant Governor, the Treasurer, the Controller, the Attorney General, the Secretary of State, and members of the State Board of Equalization. Cal. Elec. Code § 8660(a)(1)—(7).

[13]The miscellaneous state committee members include the following: (1) the national committeemen and national committeewomen of the party; (2) such immediate past party officers as are provided by party by-laws; (3) the President of the California Democratic Council and the President of the Federation of Young Democrats; and (4) former elected, nonjudicial officeholders. Cal. Elec. Code § 8660 *passim*.

California delegation to the United States Congress and Senate controls only 143 positions. *See* Cal. Elec. Code § 8660.

Finally, all party central committees have been prohibited from endorsing or opposing candidates in party primaries. Commentators have claimed that, like the cumbersome provisions dictating party governance, the ban on preprimary endorsements has weakened political parties, especially their ability to recruit and elect candidates who will further the party's goals.[14] *See* Friedman, *supra* at 70; *California Politics*, *supra* at 4; *see also* 23 Ops. Cal. Atty. Gen. 119, 122 (1954). Plaintiffs' uncontroverted affidavits show that by excluding the committees from the process of choosing party nominees "a basic function of a political party in [our system]." *Kusper v. Pontikes*, 414 U.S. 51, 58 (1973), the state has effectively drained party central committees of political power. Although the legislature has charged the committees with the responsibility of running the general election campaigns of party nominees, in reality nominees run their own campaigns through ad hoc campaign committees. Supplemental Declaration of Austin Ranney; *see also California Politics*, *supra* at 199-200. Indeed, the California Attorney Gen-

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[14]Partisan politics in California has been further inhibited by other provisions of the Elections Code. California has adopted non-partisan municipal elections, the initiative and referendum, and at one time allowed cross-filing, which permitted candidates with declared allegiance to one party to run simultaneously for the nomination of another party. Each of these Progressive-era innovations has curbed the ability of the party organization to shape the party's political agenda and support sympathetic candidates. *See California Politics* at 4 & 294-95; *cf.* Ranney, *Curing the Michief of Faction*, *supra* at 17-19.

eral has opined that the ban on preprimary endorsements reflects the Progressives' "intent to minimize the role of the established party agencies." 23 Ops. Cal. Atty. Gen. at 122. Overall, it has been observed that California's regulation of political parties has pushed them "out of much of their original domain." Friedman, *supra* at 69.

II

[1] At the outset, we consider various threshold issues raised by the State in its motion to dismiss below and renewed on appeal. The State presents four reasons for reversing the district court without reaching the merits: (1) plaintiffs' complaint fails to raise a justiciable controversy; (2) plaintiffs lack standing to bring the action; (3) the action is barred by the Eleventh Amendment; and (4) the district court should have abstained under the *Pullman* doctrine from adjudicating the first and third causes of action. We find none of these arguments persuasive.

A

Article III limits the exercise of federal judicial power to actual cases and controversies. *NAACP v. City of Richmond*, 743 F.2d 1346, 1350 (9th Cir. 1984). A plaintiff who challenges a statute must demonstrate "a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." *Babbitt v. United Farm Workers National Union*, 442 U.S. 289, 298 (1979); *see also O'Shea v. Littleton*, 414 U.S. 488, 494 (1974). But "[o]ne does not have to await the consummation of the threatened injury [to seek relief]. If the injury is certainly impending that is enough." *Babbitt*, 442 U.S. at 298 (quoting *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923)). When a plaintiff seeks to engage in conduct proscribed by statute and a credible threat of prosecution exists, he need not "expose himself to actual arrest and prosecution to be entitled to challenge [the] statute . . . ." *Id.* (quoting *Steffel v. Thompson*, 415 U.S. 452, 459 (1974)); *see also Doe v. Bolton*, 410 U.S. 179, 188 (1973). This is especially true in a First Amendment case because of "the sensitive nature of constitutionally protected expression." *Dombrowski v. Pfister*, 380 U.S. 479, 486 (1965).

Relying on *Poe v. Ullman*, 367 U.S. 497 (1961), the State claims that the action is not justiciable because the Elections Code provisions that plaintiffs challenge have never been enforced. In *Poe*, the Supreme Court held that a constitutional challenge to a Connecticut ban on contraceptives was not justiciable because the ban had never been enforced during its seventy-five year history, *id.* at 501, even though "contraceptives [were] commonly and notoriously sold in Connecticut drug stores." *Id.* at 502. This case, however, is distinguishable from *Poe* in that here we have no record that the relevant provisions have been "commonly and notoriously" violated. Indeed plaintiffs' uncontroverted affidavits show that they have consistently, if reluctantly, obeyed the statutes in conducting party affairs.

[2] Rather than *Poe*, we believe resolution of the justiciability issue is controlled by *Babbitt*, 442 U.S. at 302-03, and *Epperson v. Arkansas*, 393 U.S. 97, 101-02 (1968). In both cases, the Court found justiciability notwithstanding a record of non-enforcement because, as dis-

tinguished from *Poe*, the record did not show that the statutes had been "commonly and notoriously" violated.[15]

The State further contends that, under *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89 (1984), federal courts lack the authority to determine that a violation of a challenged state statute is a criminal offense unless the statute has already been enforced through a criminal prosecution.[16] The State asserts that because federal courts cannot "instruct[] state officials on how to conform their conduct to state law," *id.* at 106, they are necessarily disabled from finding that a state statute requires criminal prosecution. We cannot accept this reading of *Pennhurst*. There the Supreme Court merely held that federal courts had no jurisdiction over an action to compel state officials to adhere to state law. *Pennhurst* does not undermine either explicitly or implicity the settled

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[15]The State argues without authority that no case or controversy is raised by a challenge to an unenforced criminal statute unless that statute was recently enacted. This argument is refuted by *Epperson*, where the Court held the statute justiciable despite its unenforced presence on the books for forty years. *See* 393 U.S. at 109 (Black, J., concurring). Indeed, the aftermath of *Poe* teaches that federal courts should not lightly determine that a statute has fallen into desuetude. The very statute the Court characterized as a dead letter in *Poe* was struck down in *Griswold v. Connecticut*, 381 U.S. 479 (1965), after the state prosecuted two persons, including a doctor for openly counselinv married persons on the use of contraceptives. We note that the Supreme Court did not cite *Poe* in either *Babbitt* or *Epperson*.

[16]The State also asserts that criminal penalties are not associated with the violation of the challenged statutes. We agree with Judge Patel, however, that, in light of the plain statutory language of Cal. Elec. Code §§ 29102 & 29430, the apparent disavowal of any intention to enforce these laws is "anomalous." *San Francisco County Democratic Central Committee v. Eu*, No. C-83-5599, at 6 (Order filed May 3, 1984).

rule that when a plaintiff is "one against whom the[] criminal statutes directly operate . . . a sufficiently direct threat of personal detriment" is alleged. *Bolton*, 410 U.S. at 188.

B

Closely related to the case or controversy requirement is the requirement that plaintiffs have standing to bring the action.[17] *See Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38 (1976). The State argues that plaintiffs lack standing because they have not shown that any party's state central committee has adopted bylaws that conflict with the statutory restrictions on preprimary endorsements and internal goverance. Thus, the State argues, plaintiffs would not obtain effective relief from a judicial declaration that the statutes were unconstitutional. Moreover, the State argues, plaintiffs fail to state a claim for the infringement of *their* First Amendment rights because the First Amendment rights at stake belong to the party state central committees and those committees have voluntarily complied with the statutes. These arguments fail on two scores: (1) they are based

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[17]On appeal, the state has also raised the question whether the various appellee central committees have actually authorized participation in this litigation. The district court ruled that the state waived the issue of capacity to sue by failing to comply with Rule 9(a), Fed. R. Civ. P., and by failing to raise the question on summary judgment. Order Following Remand, June 1, 1984. The district court also ruled that the state had failed to challenge declarations establishing authorization to bring suit. *Id. See, e.g.*, Declaration of Mary Gingell, member of the Executive Committee of the State Central Committee of the Libertarian Party of California. VII Appendix to Appellants' Emergency Motion for Stay on appeal, at 934. We see no reason to disturb these rulings on appeal.

on the erroneous premise that conformity with obligations imposed by law proves that those laws do not restrict constitutional freedoms; and (2) they erroneously assume that the only bodies capable of challenging the statutes are the party state central committees.

[3] The fact that no state central committee currently has bylaws that conflict with the challenged statutes hardly indicates that those statutes do not restrict the parties' First Amendment rights. Parties cannot qualify for the ballot unless they conform their operations to the statutory blueprint prescribed for one of the existing ballot-qualified parties. *See* Cal. Elec. Code § 9955. The State nonetheless argues that a party's decision to become ballot-qualified makes its conformance with those statutes voluntary and thus removes any constitutional difficulty. *See* Appellant's Supplemental Brief on Remand at 4. A state cannot, however, constitutionally condition a party's access to the ballot—the lifeblood of any party—upon that party's foregoing its First Amendment freedoms. The First Amendment bars the government from attaching unconstitutional conditions even to benefits the government has no obligation to bestow. *See, e.g., Regan v. Taxation With Representation*, 461 U.S. 540, 545 (1983) ("the government may not deny a benefit to a person because he exercises a constitutional right"); *Perry v. Sinderman*, 408 U.S. 593, 597 (1972); *Speiser v. Randall*, 357 U.S. 513, 526 (1958). The bar applies even more forcefully when the government attempts to attach unconstitutional conditions to a party's right of access to the ballot.

[4] We also reject the State's suggestion that if political parties are reluctant to violate the statutes they must

obtain standing by adopting bylaws that conflict with the statutes and then disregarding those bylaws in actual practice. Institutions are not required to make the empty gesture of passing rules that are void as a matter of law and ignored as a matter of institutional practice in order to satisfy standing requirements. Certainly a failure to make such a futile gesture gives us no grounds for inferring that the parties' bylaws merely reflect a neat coincidence of what the parties want and what the statutes require. The State correctly points out that in *Tashjian* the Republican Party of the State of Connecticut had adopted a party rule that conflicted with state election law. *See* 107 S. Ct. at 546-47. But the Supreme Court nowhere suggested in *Tashjian* that the adoption of a conflicting bylaw was necessary to confer standing or to show infringement of a First Amendment right.

Finally, the State makes the rather astonishing argument that the legislative action in this case can be equated with voluntary action by the political parties. The State asserts that:

> when the nominees of a party who are actually elected to the Legislature enact legislation affecting the organization and procedures of the party institutions the legislation is an act of self-governance by the party itself. Appellants presented evidence in the district court to support their motion for summary judgment and to oppose appellee's (sic) motion demonstrating that by custom and practice the political parties represented in the legislature accept each other's party legislation. Obviously, the legislators, who are inherently their party, are also exercising the legislative power of the state.

Appellants' Supplemental Brief Pursuant to Court Order Dated August 5, 1985, at 3.

The State's argument collapses on its own terms. State legislators are not "inherently their party." Nor do legislative enactments that bind the parties and carry criminal penalties represent the parties' own voluntary action. The exercise of the coercive power of the state is the antithesis of voluntary action by political associations. Regardless of the motives of individual legislators or the quid pro quo arrangements that led to passage of of the challenged statutes, the result remains the same: state regulation of political parties. To hold otherwise would be to allow the state legislature to endow the committees with "the statutory function of party leadership," 23 Ops. Cal. Atty. Gen. 119, 123 (1954), and place that leadership in the effective control of state legislators, *see California Politics* at 191, without fear that their exercise of legislative power will be reviewed under the First Amendment.[18]

The State has simply failed to make any showing that the political parties have voluntarily adopted the statutory restrictions. Indeed, the uncontroverted affidavits of party

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[18]The State also relies on *Marchioro* v. *Chaney*, 442 U.S. 191 (1979). In *Marchioro*, the plaintiffs contended that the policymaking body of a political party enjoys an absolute First Amendment exemption from state regulation. The Supreme Court rejected the claim without reaching the First Amendment issue by pointing out that the state law did not require the central committee to perform any policymaking functions; those functions had been freely delegated to the central committee by the party itself. *Id* at 198 & n.13; *see also* Weisburd, *Candidate-Making and the Constitution*, *supra* at 270 n.336. In this case, by contrast, state law compels ballot-qualified parties to adopt the statutory restrictions.

representatives indicate the contrary: they would reform the composition of their parties' central committees if the statutes were invalidated. Moreover, all committee plaintiffs say they would make preprimary endorsements if the practice were not prohibited. The obvious fact that the State Central Committee of the Libertarian Party of California is a named plaintiff would seem to satisfy even the State's assertion that plaintiffs cannot state a cause of action unless they show that "the statutes conflict with the policies and will of" the state central committees. *See* Appellants' Supplemental Brief on Remand From the United States Supreme Court at 6-8.

Even if the State were correct in asserting that the state central committees have no standing to challenge the statutes until they adopt conflicting bylaws, the State has still failed to show that plaintiffs do not have standing to bring suit for the infringement of *their* First Amendment rights as party officials, county committees, and party members. Indeed, the State's argument that the only bodies capable of challenging the statutes prescribing the membership and terms of the state central committees are the state central committees themselves turns the associational interest at stake on its head. The associational rights of political parties and their members to choose their own governing body would be of little avail if a statute imposing a state-created and selected governing body could only be challenged by the governing body the state imposed. We thus reject the State's apparent assertion that political parties and their members must endure leadership chosen by the State until that leadership votes itself out. Nor do we accept the State's assertion that only the state central committees can challenge the statutes for-

bidding preprimary endorsements. The State never offers any satisfactory explanation as to why the county committees cannot challenge the statutes prohibiting preprimary endorsements as an infringement of *their* rights to speak freely. Nor has the State explained why the individual party members cannot challenge these statutes as an infringement of *their* First Amendment right to *listen*. *See e.g., First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978) ("the First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw.") *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 757 (1976) (acknowledging "a First Amendment right to 'receive information and ideas,' and that freedom of speech '"necessarily protects the right to receive."'") (quoting *Kleindeist v. Mandel*, 408 U.S. 753, 762-63 (1972)).

C

[5] The State next argues that plaintiffs' action is barred by the Eleventh Amendment. It is settled law, however, that the Eleventh Amendment does not bar an action seeking prospective relief from enforcement of an unconstitutional statute. *Ex parte Young*, 209 U.S. 123 (1908). Because plaintiffs do not seek damages, but only declaratory and injunctive relief, *Ex parte Young* is directly controlling. *See also Edelman v. Jordan*, 415 U.S. 651, 664 (1974).

D

Finally, relying on *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), the State contends that

the district court should have abstained from adjudicating plaintiffs' first and third counts pending the resolution of litigation in state court raising similar challenges to the Elections Code. In *Pullman*, the Supreme Court held that abstention may be appropriate "when difficult and unsettled questions of state law must be resolved before a substantial federal constitutional question can be decided." *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 236 (1984). *Pullman* abstention is inappropriate, however, "when a state statute is not "fairly subject to an interpretation which will render unnecessary' adjudication of the federal constitutional question." *Id.* (citation omitted); *see also Canton v. Spokane School District No. 81*, 498 F.2d 840, 845 (9th Cir. 1974).

[6] Here, the State does not advance an interpretation of the Elections Code that would moot the constitutional questions raised by plaintiffs. Nor could the State do so. Section 11702 is clear on its face that central committees may not make preprimary endorsements, and other provisions prescribe in minute detail committee membership and limit the terms of committee chairs. Thus the district court's refusal to invoke *Pullman* abstention was not an abuse of discretion.[9] *See C-Y Development Co. v. City of Redlands*, 703 F.2d 375, 377 (9th Cir. 1983).

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[9]This court has a "virtually unflagging obligation" to exercise jurisdiction and may abstain only in exceptional circumstances. *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976). This unflagging "'obligation is particularly weighty when those seeking a hearing in federal court are asserting . . . their right to relief under 42 U.S.C. § 1983.'" *Miofsky v. Superior Court of California*, 703 F.2d 332, 338 (9th Cir. 1983 (quoting *Tovar v. Billmeyer*, 609 F.2d 1291, 1293 (9th Cir. 1980)).

III

Before considering plaintiffs' claims that the Elections Code unjustifiably burdens their First Amendment rights, we address the State's contention that the state and county central committees of California's ballot-qualified political parties have no First Amendment rights because they are public entities, not private associations. The State asserts that the legislature transformed the committees from voluntary political associations into public entities "integral [to] the state's election system," Appellants' Supplemental Brief, p. 15, when it dictated the committees' organization and powers and charged them with the responsibility of conducting the general election campaigns of party nominees. *Id.*, p. 13.

[7] In essence, the State argues that by regulating the committees, the legislature may deprive them of First Amendment rights. The State's argument is flawed by "bootstrap reasoning." *Abrams v. Reno*, 452 F. Supp. 1166, 1170 (S.D.Fla. 1978) ("[w]ithout begging the question of the right of a political executive committee to exist and function without the breath of life provided by the election code, it seems to be bootstrap reasoning to suggest that election code regulation permits the denial of substantial constitutional rights"), *aff'd*, 649 F.2d 342 (5th Cir. 1981), *cert. denied*, 445 U.S. 1016 (1982). Even if the California Elections Code had expressly characterized the committees as public agencies,[39] we would reject the

[39]The status of these committees under the Elections Code is less clear than the State would have us believe. The State contends that under *Katz v. Fitzgerald*, 152 Cal. 433 (1907), "political parties shall be . . . regarded as public bodies whose

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State's premise that a state can strip a voluntary political association of First Amendment rights by legislating it into an arm of the state. In *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530 (1980), for instance, the Supreme Court held that extensive regulation, however beneficial to the public, cannot deprive a utility of its status as a private entity entitled to constitutional rights. *Id.* at 533-34 & n.1. Likewise, in *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), the Court repudiated the notion that the status of corporations as "creatures of the state" permits the state to prohibit corporate speech. *Id.* at 778 n.14. It follows a *fortiori* that the state cannot abridge the First Amendment rights of political associations by arguing that regulatory legislation

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methods are to be controlled by the state." *Id.* at 435. While a state's characterization of state political parties does not bind this court's determination of plaintiffs' First Amendment status, we note that the State's characterization of the committees as public entities is belied by the refusal of both the California Supreme Court and the California Attorney General to so characterize them. *See Unger II*, 37 Cal. 3d at 615 (committees "are not agencies of the state for all purposes"); 59 Ops. Cal. Atty. Gen. 60, 61 (1976) (committees "are not public agencies"); 23 Ops. Cal. Atty. Gen. 119, 120 (1954) (committees "are no more public agencies than were their counterparts in the pre-primary era"). Moreover, the contention that the committees are state agencies is somewhat incongruous because unlike the sovereign, party central committees are expected to serve party interests, not the interests of the public at large; specifically, they are charged by statute with the responsibility of running the general election campaigns of party nominees. *See, e.g.*, Cal. Elec. Code §§ 8776 & 8940.

makes them "creatures of the state."[21] *Cf. Tashjian*, 107 S.Ct. at 550 (state's power to regulate elections does not justify, without more, the abridgement of the associational rights of political parties and their members).

We recognize that California has extensively regulated political parties. The State, however, turns constitutional analysis upside down when it argues that its Elections Code provisions are immune from constitutional attack because they deprive the party committees of First Amendment status. The question is not whether the committees lack First Amendment rights because of state regulation. Rather, the question is whether the challenged statutory provisions must fall because they violate the committees' First Amendment rights. Turning to this question, we address in Part IV the constitutionality of the provisions that regulate the structure and internal affairs of the parties. In Part V, we consider the constitutionality of the ban on preprimary endorsements.

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[21]The so-called "white primary" cases are not to the contrary. While the State cites *Smith v. Allwright*, 321 U.S. 649, 664-65 (1944), for the proposition that political parties are "public bodies" because they are part of the state's machinery for choosing officials, that case held only that a state party's disenfranchisement of black party members in its primary election amounted to state action for purposes of the Fifteenth Amendment. In later cases, the Court has limited *Smith* to its unusual context: a state-mandated racially discriminatory primary scheme in a one-party state where nomination is tantamount to election. In both *Cousins v. Wigoda*, 419 U.S. 477 (1975), and *Democratic Party v. Wisconsin ex rel. La Follette*, 450 U.S. 107 (1981), the Court "appears to reject the argument that an activity is state action solely because it is integral to a state-created election process." Weisburd, *Candidate-Making and the Constitution*, *supra* at 239 (1984).

IV

Our analysis of plaintiffs' constitutional claims begins with the fundamental premise that "a significant impairment of First Amendment rights must survive exacting scrutiny." *Elrod v. Burns*, 427 U.S. 347, 362 (1976) (plurality); *see also Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 294 (1981). It, as plaintiffs allege, the state statutes interfere with their rights to free association and free expression, the statutes can survive First Amendment scrutiny only if the State shows that they are "necessary to serve a compelling interest." *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979); *see also Kusper v. Pontikes*, 414 U.S. 51, 58-59 (1973) ("even when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberty").[22]

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[22]The Supreme Court has developed the following detailed methodology for deciding whether laws that impinge on associational freedoms violate the First Amendment.

> [A] court . . . must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests; it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights.

Tashjian, 107 S. Ct. at 548 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)); *see also Socialist Workers Party v. Secretary of State*, 765 F.2d 1417, 1418 (9th Cir. 1985). We do not, however, construe *Tashjian* and *Anderson* as disturbing the settled rule that laws that restrict First Amendment freedoms

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We first consider whether the statutes' regulation of the selection of state committee members and the term of office of committee chairs burdens plaintiffs' First Amendment rights. We then consider whether this regulation serves compelling state interests. *See Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

A

"[T]he right of individuals to associate for the advancement of political beliefs" is fundamental, *Williams v. Rhodes*, 393 U.S. 23, 30 (1968), and includes the "freedom to identify the people who constitute the association, and to limit the association to those people only," *Wisconsin ex rel. La Follette*, 450 U.S. at 122; *see also Tashjian*, 107 S. Ct. at 549. Because the right of association would be hollow without a corollary right of self-governance, "there must be a right not only to form political associations but to organize and direct them in the way that will make them most effective." *Ripon Society Inc. v. National Republican Party*, 525 F.2d 567, 585 (D.C.Cir. 1975), *cert. denied*, 424 U.S. 933 (1976). "The Party's determination . . . of the structure which best allows it to pursue its political goals is protected by the Constitution." *Tashjian*, 107 S. Ct. at 554; *see aso Ripon Society Inc.*, 525 F.2d at 585 ("a party's choice, as among various ways of governing itself, of

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must "be demonstrably supported by not only a legitimate state interest, but a compelling one." *Brown v. Hartlage*, 456 U.S. 45, 53-54 (1982). Indeed, in a later passage in *Tachjian* the Supreme Court makes clear that the inquiry is whether an election code that infringes first amendment rights "is a narrowly tailored regulation which advances the State's compelling interests." *Tashjian*, 107 S. Ct. at 550.

the one which seems best calculated to strengthen the party and advance its interests, deserves the *protection* of the Constitution. . . .") (emphasis in original).

[8] It is readily apparent that the California statutes burden the parties' right to govern themselves as they think best. By legislative fiat, the State vests party leadership in the central committees, determines the size of the committees, and apportions their membership according to a statutory formula. Whether this formula is or is not "best calculated to strengthen the party and advance its interests," *Ripon Society Inc.*, 525 F.2d at 585, is irrelevant to First Amendment analysis. *See Tashjian*, 107 S. Ct. at 554. It is the right of the party, not the State, to decide how the party shall be governed. *See id.*

In stacking the deck heavily in favor of elected officials and party nominees, the legislature has dictated to each ballot-qualified party an organizational structure that may not be the party's choice. For example, a party trying to adapt to changing conditions may have interests that differ from the interests of entrenched incumbents. Commentators have noted that the pro-incumbent composition and unwieldy size of California's state central committees have made them "fairly rigid organization[s] incapable of adjusting and responding to changing conditions." *California Politics*, *supra* at 186.

The experience of the Libertarian party exemplifies the plight of a political party forced to operate under state-mandated rules of governance. When the Libertarian party qualified for the ballot, it was forced to jettison its "preferred and natural" party organization and replace it with one already mandated for one of the existing quali-

fied parties.[23] *See* Declaration of Mary Gingell. After adopting the rules of the Peace and Freedom Party as the least objectionable interim model, the Libertarians drafted a body of rules specifically tailored to their party's distinctive needs. When presented to the legislature, the proposed rules languished and died in committee. *See id.* Thus, the Libertarian party has been compelled by the state to organize itself in a way considered inimical to its political interests.

[9] Moreover, we believe that the challenged statutes directly interfere with the parties' free expression by inevitably coloring the message that the parties communicate to the electorate. *See Tashjian*, 770 F.2d 265, 282 (2d Cir. 1985) ("in light of the intimate relationship between the structure of a political association and the message ultimately transmitted by that group, . . . the inexorable effect of [regulating the structure of political parties] is to alter the Party's message"), *aff'd* 107 S. Ct. 544(1986). By favoring incumbents, the California legislature may give ballot-qualified parties a proincumbent image that impedes their associational goals.[24] For instance, a party's efforts

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[23]Parties that newly qualify for the ballot by demonstrating adequate electoral strength under Cal. Elec. Code § 6430 are required to conform their operations to the statutory blueprint prescribed for one of the existing ballot-qualified parties. *Id.* § 9995. The Libertarian party qualified in 1980. Declaration of Mary Gingell.

[24]Commentators have noted that mandatory organizational provisions damage a party's freedom to determine its own message. See Weisburd, *Candidate-Making and the Constitution*, *supra* at 260-61 ("requiring a particular form of party organization can prevent party adherents from attaining objectives inconsistent with that required form of organization"); *cf.* Note, *Primary Elections and the Collective Right of Freedom of Association*, 94 Yale L. J. 117, 126 (1984) ("a political party's ability to define its boundaries cannot be separated from the party's ability to determine its political ideology").

to change political course may be frustrated by the incumbent bias inherent in its organizational structures. We do not intend to say that elected officials and party nominees are incapable of providing strong and effective leadership. What we do intend to say is that when the state restricts a party's freedom to choose its leadership, the state burdens the party's First Amendment rights.

The parties' associational right to choose their own leadership is also burdened by the single-term limit on committee chairs. In limiting committee chairpersons to one two-year term — regardless of their popularity and effectiveness — the legislature has impaired the parties' ability to commit their fortunes to experienced and successful leadership. As Judge Patel recognized below, parties are "gravely weakened if the members are not permitted to make use of an able leader for a long enough period of time to ensure effective administration." *San Francisco County Central Committee v. Eu*, No. C-83-5599 at 20 (Order filed May 3, 1984).

In short it seems clear to us that if "the freedom to join together in furtherance of common political beliefs 'necessarily presupposes the freedom to identify the people who constitute the association,'" *Tashjian*, 107 S. Ct. at 549 (quoting *Wisconsin ex rel. La Follette*, 450 U.S. at 122), then *a fortiori* that same political freedom necessarily presupposes the freedom to identify the people who *run* the association. Thus, in holding that the First Amendment rights of the Republican Party and its members to reach out to non-members were infringed by a law preventing independents from voting in Republican primaries, the Court in *Tashjian* provided fresh authority for our holding that the First Amendment rights of political parties

and their members to choose their own leaders are infringed by laws prescribing the membership and terms of parties' governing bodies. We note in particular that the Court found the associational interests at stake in *Tashjian* substantial even though the only obstacle facing independent voters who wanted to vote in Republican primaries was the requirement that they register Republican on the day of the primary. 107 S. Ct. at 550 n.7. In this case, by contrast, the associational interests at stake seem even more substantial because a political party cannot freely choose its own leaders without losing its place on the ballot.

B

Having concluded that the challenged statutes burden appellees' First Amendment rights, we turn to "the precise interests put forward by the State as justifications for the burden imposed by its rule." *Anderson*, 460 U.S. at 789.

The State claims that it has a compelling interest in sheltering the parties from factional strife so that the governing committees will be in a strong position to carry out their statutory responsibility of running the general election campaigns of party nominees. This interest in avoiding factionalism, the argument goes, justifies state interference with the associational rights of political parties and their adherents. The State further claims that unless statutes determine the composition of the parties' governing bodies for the parties, those parties will be so divided by internal political battles for control of the governing bodies that the parties will be unable to run effective campaigns in the general election. The State argues that vesting control of the state committees in elected officials and

party nominees assures that the committees will be broadly representative and resistant to factionalism.

The State also cites its professed interest in restraining factions as a justification for limiting the terms of party chairs. The State maintains that when the term limitation is combined with the statutory requirement that chairs rotate between northern and southern California, friction between these distinct regional interests is minimized.

In sum, the State argues that the Elections Code provisions regulating the membership of party governing committees and limiting the terms of committee chairs serve the state's assertedly compelling interest in avoiding "splintered parties and unrestrained factionalism," *Storer v. Brown*, 415 U.S. 724, 736 (1974); *see also Tashjian*, 107 S. Ct. at 553. In advancing this argument, the State misperceives the nature of the state interest recognized as compelling in *Tashjian* and *Storer*. To be sure, in *Storer* the Court recognized that a state has a compelling interest in "the stability of its political system," 415 U.S. at 736. But, as the Supreme Court pointed out in *Tashjian*, "[t]he statute in *Storer* was designed to . . . . prevent the disruption of political parties from without, and not, as in this case, to prevent the parties from taking internal steps affecting their own process for the selection of candidates." *Tashjian*, 107 S.Ct. at 553-54.

[10] This distinction between disruption from within and disruption from without, which the Court so clearly delineated in *Tashjian* as a basis for distinguishing *Storer*, is the distinction that the State fails to come to grips with in this case. The California statutes under attack make no effort to prevent the disruption of political parties

and their members to choose their own leaders are infringed by laws prescribing the membership and terms of parties' governing bodies. We note in particular that the Court found the associational interests at stake in *Tashjian* substantial even though the only obstacle facing independent voters who wanted to vote in Republican primaries was the requirement that they register Republican on the day of the primary. 107 S. Ct. at 550 n.7. In this case, by contrast, the associational interests at stake seem even more substantial because a political party cannot freely choose its own leaders without losing its place on the ballot

B

Having concluded that the challenged statutes burden appellees' First Amendment rights, we turn to "the precise interests put forward by the State as justifications for the burden imposed by its rule." *Anderson*, 460 U.S. at 789.

The State claims that it has a compelling interest in sheltering the parties from factional strife so that the governing committees will be in a strong position to carry out their statutory responsibility of running the general election campaigns of party nominees. This interest in avoiding factionalism, the argument goes, justifies state interference with the associational rights of political parties and their adherents. The State further claims that unless statutes determine the composition of the parties' governing bodies for the parties, those parties will be so divided by internal political battles for control of the governing bodies that the parties will be unable to run effective campaigns in the general election. The State argues that vesting control of the state committees in elected officials and

party nominees assures that the committees will be broadly representative and resistant to factionalism.

The State also cites its professed interest in restraining factions as a justification for limiting the terms of party chairs. The State maintains that when the term limitation is combined with the statutory requirement that chairs rotate between northern and southern California, friction between these distinct regional interests is minimized.

In sum, the State argues that the Elections Code provisions regulating the membership of party governing committees and limiting the terms of committee chairs serve the state's assertedly compelling interest in avoiding "splintered parties and unrestrained factionalism," *Storer v. Brown*, 415 U.S. 724, 736 (1974); *see also Tashjian*, 107 S. Ct. at 553. In advancing this argument, the State misperceives the nature of the state interest recognized as compelling in *Tashjian* and *Storer*. To be sure, in *Storer* the Court recognized that a state has a compelling interest in "the stability of its political system," 415 U.S. at 736. But, as the Supreme Court pointed out in *Tashjian*, "[t]he statute in *Storer* was designed to . . . . prevent the disruption of political parties from without, and not, as in this case, to prevent the parties from taking internal steps affecting their own process for the selection of candidates." *Tashjian*, 107 S.Ct. at 553-54.

[10] This distinction between disruption from within and disruption from without, which the Court so clearly delineated in *Tashjian* as a basis for distinguishing *Storer*, is the distinction that the State fails to come to grips with in this case. The California statutes under attack make no effort to prevent the disruption of political parties

from forces *outside* the party; rather they intrude directly on *internal* party affairs by dictating who can serve on the various state central committees. Indeed, it would seem that if any issue involves the internal workings of a political party, it is the process of selecting the party's leadership.

Rather than explaining how the statutes serve a compelling interest by actually preventing disruption from an outside force, the State seems content to argue mainly that its regulation of internal party affairs is not illegitimate because the bylaws of all the parties' state central committees in fact conform with the statutory requirements.[25] This argument rehashes the standing argument discussed above, *see supra* at 17-19, and we again reject

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[25]The State's use of *Marchioro v. Chaney*, 442 U.S. 191 (1979), to support the challenged governance provisions outstrips the limited rationale of that case. In *Marchioro*, the State of Washington attempted to require that the state central committee be composed in a represenative fashion. The authorizing statute empowered the central committee to perform certain limited duties, such as calling party conventions and filling vacancies on the party ticket. In addition, the charter of the Democratic Party delegated to the committee considerable responsibility in raising funds, recruiting candidates, and setting general policy. The plaintiffs, would-be committee members who were elected pursuant to a charter amendment that sought to supplement the membership stipulated by state law, sued to enjoin their exclusion based on the statute on the ground that a party policymaking body enjoyed a First Amendment exemption from state regulation. The Supreme Court dismissed the plaintiffs' claim without resolving the constitutionality of the Washington regulation. The Court noted that the party freely delegated the committee powers upon which the plaintiffs predicated their challenge; and plaintiffs did not oppose the committee's performance of its state-imposed duties. *Id.* at 197-98. Thus, the Court held that the source of the plaintiffs' grievance was the party's exercise of its right of self-governance, not state interference with that right. *Id.* at 199.

the State's assertion that political parties have no standing to challenge statutes restricing their First Amendment rights unless they first adopt bylaws that conflict with the statutes. Moreover, this argument also fails to recognize that once an infringement of First Amendment rights is demonstrated, the government has the burden of showing a compelling state interest. *See* 107 S. Ct. at 550. Even if the State could prove that the parties would have voluntarily adopted the same rules of governance in the absence of the statutes, the State's burden to show a compelling interest would hardly be met. Indeed, it would seem perverse to hold that a compelling state interest is advanced by regulations that have no effect on those regulated. At any rate, it is hard to see what state interest is served by statutes that require parties to organize themselves in a prescribed way unless those statutes prevent the parties from organizing themselves differently. Even if no party at the present time wished to adopt rules in conflict with the statutes, the State's interest in preventing any party from doing so in the future would hardly be considered either compelling or even legitimate under *Tashjian*.

In short, the State's defense of its statutes forces it to take a paradoxical position. To show that the statutes advance a compelling interest, the State must show that the statutes actually accomplish something by forcing the parties to adopt rules they otherwise would not adopt. But in its attempt to show that the statutes do not illegitimately intrude on internal party decision-making, the State must argue that the parties would have adopted the same rules in the absence of the statutes. In making these arguments, the State never attempts to explain why, even if

it were correct in its judgment that the rules of governance prescribed by the statutes best served the interests of the various parties, the parties could not adopt those rules voluntarily.[28] Underlying the State's paradoxical position seems to be a paternalistic assumption that, left to their own devices, parties will act in a manner adverse to their own interests. We have no trouble concluding that the First Amendment forecloses paternalistic state action designed to protect parties from choosing rules of governance that may prove to be harmful to party interests. Freedom to choose includes the right to choose unwisely. That was made resoundingly clear by the Supreme Court in *Tashjian*:

> The State argues that its statute is well designed to save the Republican Party from undertaking a course of conduct destructive of its own interests. But on this point "even if the State were correct, a State, or a court, may not constitutionally substitute its own judgment for that of the Party." *Democratic Party of United States v. Wisconsin*, 450 U.S., at 123-24, 101 S.Ct., at 1019-1020 (footnote omitted). The Party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution.

107 S. Ct. at 554.

[12] Moreover, any state regulation of political parties beyond that necessary to further orderly elections must be

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[28]The State does assert that the statutes are necessary to allow political parties to enforce their organizational rules in court but does not explain why judicial enforcement is necessary to advance any state interest. Nor does the State explain why a statute providing for judicial enforcement of parties' rules, which left the content of those rules up to the parties, would not be a less restrictive alternative.

viewed with great skepticism. To be sure, some state regulation that affects political parties serves a compelling interest in protecting "the integrity of the electoral process." *Rosario v. Rockefeller*, 410 U.S. 752, 761 (1973). As the Supreme Court said in *Storer*, "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." 415 U.S. at 730. Thus, a state may restrict access to the ballot. *See Bullock v. Carter*, 405 U.S. 134, 145 (1972) (a state "has a legitimate interest in regulating the number of candidates on the ballot"). Toward this end, a state may require that candidates meet minimum standards to qualify for the ballot in order to keep "its ballots within manageable, understandable limits." *Lubin v. Panish*, 415 U.S. 709, 715 (1974). For example, independent candidates may be required to present nominating petitions that demonstrate "a significant modicum of [electoral] support." *Jenness v. Fortson*, 403 U.S. 431, 442 (1971); *see also American Party of Texas v. White*, 415 U. S. 767, 782 (1974). A state may also require the payment of filing fees to weed out spurious candidacies, *see Bullock*, 405 U.S. at 145, so long as the fees are not excessive or a bar to indigent candidates. *Lubin*, 415 U.S. at 717-18. Further, a state may protect the integrity of its primary elections by imposing a waiting period before voters can switch their registered party affiliation, *Rosario*, 410 U.S. 752 (1973), and before candidates registered with one party can renounce their affiliation to run as independent candidates. *Storer*, 415 U.S. 724 (1974).

It is equally clear, however, that our deference to a state's interest in orderly elections must be tempered by

the risk that state regulation will favor some parties and some party factions over others. For example, a state's interest in "the stability of its political system", 415 U.S. at 736, does not extend to state regulation that effectively restricts the ballot to the major parties or that ensures that the major parties remain ballot-qualified. *Williams*, 393 U.S. at 32; *see also Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 185-86 (1979). As the Supreme Court noted in a related context, "care must be taken not to confuse the interest of partisan organizations with governmental interests." *Elrod*, 427 U.S. at 362. Thus, although a state's interest in orderly elections allows it to impose reasonable, non-discriminatory restrictions on ballot access, a state may not go to bat for political parties to assure that they remain ballot-qualified. In other words, a state has no interest in regulating political parties for the purpose of helping them win or retain voter support. Political parties are nothing more than voluntary associations of individuals who band together in pursuit of shared political goals. A party's survival depends upon its ability to compete in the free marketplace of political ideas and ideals. The First Amendment limits states to a neutral role in that competitive process. A state may not interfere with the associational rights of political parties beyond what is necessary to assure honest and orderly elections.

[13] In short, a state's interest is in orderly elections, not orderly parties, and it may regulate political parties only as an incident to regulating elections. Moreover, although under *Tashjian* a state's interest in orderly elections can sometimes justify laws that protect parties from disruption, it can do *so only* if that disruption comes from

outside the party. *See supra* at 35. Thus, the State's arguments in this case fail on two counts. Not only does the State fail to show that the statutes at issue prevent outside disruption, the State fails to show that the promotion of party harmony assertedly advanced by the statutes has anything to do with the State's interest in orderly elections. Any state involvement in promoting party harmony inevitably poses the risk that a state will favor one party or one faction within a party over another. After all, "the views of the State . . . to some extent represent the views of the one political party transiently enjoying majority power." *Tashjian*, 107 S. Ct. at 554. The risk that a state will favor some factions over others is at its highest, and a state's interest in orderly elections is at its lowest, when a state tries to dictate who will govern each party.

Thus, the State's reliance on *Storer v. Brown* is misplaced. In *Storer*, the Court upheld a California "sore loser" statute that required independent candidates for political office to disaffiliate from their former political party at least one year prior to the party primary. *Storer* recognized that a state's legitimate interest in limiting access to the general election ballot entitles it to reserve that ballot for "major struggles," free of the destabilizing effect of "continuing intraparty feuds." *Storer*, 415 U.S. at 735; *see also American Party of Texas*, 415 U.S. at 781 (a state "may insist that intraparty competition be settled before the general election. . . ."). But critical to the *Storer* holding was that California's disaffiliation provision did not attempt to control intraparty feuding during the primary campaigns. To the contrary the primary was recognized as the forum in which "contending

forces within the party finally settle their differences." *Storer*, 415 U.S. at 735; *see also Anderson*, 460 U.S. at 803 (the *Storer* Court did not "suggest that a political party could invoke the powers of the State to assure monolithic control over its own members and supporters."). Nothing in *Storer* suggests that a state may preempt intraparty feuding to help the parties win elections.

[14] Some intraparty feuding is as inevitable in the process of choosing party officials as it is in the process of choosing candidates to carry a party's banner in the general elections. The State's argument here, that it can prescribe party rules of governance in order to preempt intraparty struggles over questions of party governance, is certainly a far cry from *Storer*, which merely held that a state can regulate the timing of otherwise unregulated intraparty struggles over choosing candidates. In other words, *Storer* recognized that a state's compelling interest in orderly general elections justified requiring that party adherents finally settle their differences over the selection of party candidates a reasonable time before election day. However, government's power to regulate the timing of some intraparty feuds in order to protect general elections from disruption hardly gives government the power to preempt party decision-making in order to protect political parties from the disruption inherent in deciding matters for themselves. Such governmental preemption of party decision-making goes well beyond the government's legitimate interest in orderly elections. Intraparty feuding may indeed weaken and divide a party and result in defeat at the polls, but the government's concern is in an orderly election process, not in helping parties maintain their strength and win elections. The State confuses campaigns

with elections, partisan interests with state interests. We hold, therefore, that no compelling state interest is served by the California Elections Code provisions regulating the membership of party governing committees and limiting the terms of committee chairs.

C

[15] Moreover, even should we assume that the State has a compelling interest in minimizing party factionalism, it has failed to carry its burden of showing "a substantially relevant correlation between the governmental interest asserted." *Pacific Gas & Electric Co. v. Public Utilities Commission of California*, 106 S.Ct. 903, 913 (1986), and the Elections Code sections regulating the selection of state committee members and the term of office of their chairs. We agree with Judge Patel that the State failed to submit "a shred of evidence", *San Francisco County Central Committee v. Eu*, No. C-83-5599, at 22 (Order filed May 3, 1984), in support of its claim that unregulated parties would be more vulnerable to "the predations of faction." Appellants' Supplemental Brief at 44. In opposing plaintiffs' summary judgment motion on the merits, the State relied exclusively on the affidavit of retired Democratic state senator Albert S. Rodda, Jr., a longtime member of the Democratic state central committee. As Judge Patel observed, this affidavit consists of "opinions . . . not based on facts, but on speculations." *San Francisco County Central Committee v. Eu*, at 16. With respect to the provisions that regulate committee governance, Senator Rodda makes the single conclusory statement that they "provide some protection against devices

used by factions to exclude others from participation in party affairs." Affidavit of Albert S. Rodda, Jr.

The Rodda affidavit fails to controvert plaintiffs' declarations concerning the impact that the challenged Elections Code provisions have on political parties. Plaintiffs' declarations demonstrate that these provisions weaken rather than strengthen the leadership of ballot-qualified parties. For example, the provisions regulating state committee membership stifle party debate by overrepresenting elected officials. *See* Declarations of David E. Sturrock and Bert Coffey. Plaintiffs have also shown the difficulty of effecting a change in party leadership because party initiatives are left to the mercy of a slow-moving, possibly recalcitrant legislature. *See* Declaration of Hugh Bone.

Finally, plaintiffs' declarations show that the state's extensive regulation of party leadership discourages able people from taking an active role in party organization and hinders a party's recruitment of new leaders. *See* Declarations of Bert Coffey and Austin Ranney. Although the State claims that the challenged statutes invigorate and democratize the parties, as the Progressives ostensibly set out to do, *see supra* at 8-13, the record demonstrates the opposite: in fact, the parties have become weak and fossilized. Thus, we conclude that the State has failed to demonstrate that the statutes advance its professed interest in strong party leadership.[27]

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[27]Although the State claims that the Progressive' reform of political parties strengthened party leadership, the Attorney General of California once rendered a formal opinion that the reforms reflect the Progressives' intent "to minimize the role of the established party agencies." 23 Ops. Cal. Atty. Gen. at 122

V

Finally, we consider the constitutionality of California's outright ban on partisan preprimary endorsements, Cal. Elec. Code § 11702.[28] Because section 11702 prohibits political speech, the inviolability of which rests at the core of the First Amendment, *see, e.g., Buckley v. Valeo*, 424 U.S. 1, 14 (1976): *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971), we must subject the section to strict scrutiny, "[W]here . . . a prohibition is directed at speech itself, and the speech is intimately related to the process of governing, 'the State may prevail only upon showing a subordinating interest which is compelling.'" *Bellotti*, 435 U.S. at 786 (quoting *Bates v. Little Rock*, 361 U.S. 516, 524 (1960)). Moreover, "'the burden is on the government to show the existence of such an interest.'" *Bellotti*, 435 U.S. at 786 (quoting *Elrod*, 427 U.S. at 362). Finally, "the state action may be sustained only if the government can show that the regulation is a precisely drawn means of serving" its interests. *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530, 540 (1980).

The State argues that the ban on preprimary endorsements serves two governmental interests that it claims are compelling: (1) protecting the party from factionalism; and (2) protecting primary voters from confusion and undue influence. We will address each interest in turn.

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[28]Until recently, Florida was the only state other than California that forbade partisan preprimary endorsements. See Weisburd, *Candidate-Making and the Constitution*, *supra* at 271 n.343. The Florida statute was held to violate the First Amendment in *Adams v. Reno*, 452 F. Supp. 1166, 1170 (S.D. Fla. 1978), *aff'd* 649 F.2d 342 (5th Cir. 1981), *cert. denied*, 455 U.S. 1016 (1982).

MacGregor Burns, is that party control degenerates into a "personalistic system that caters to irresponsible political campaigning and public service." Thus, as Burns concludes, "taking away the endorsement power strikes at the very core of the party." *See also* Declaration of Eugene Lee ("[a] political party unable to endorse candidates is: by definition, a weak party"); *California Politics*, *supra* at 5 ("[C]alifornia campaigns are highly personalized extravaganzas").

Second, plaintiffs showed that in states that permit partisan primary endorsements, the practice is generally used in a selective, circumspect fashion so as not to endanger party unity. Several affiants experienced in the politics of other states testified that when no candidate has been the clear favorite of the party leadership, the leadership has either refrained from issuing controversial endorsements or endorsed several candidates in the same race. *See, e.g.*, Declarations of Eugene Lee and James MacGregor Burns. Moreover, the ability to issue endorsements has helped party leadership distinguish candidates genuinely allied with the party from candidates who are essentially masquerading as party adherents. In California, conversely, the ban on preprimary endorsements has on occasion allowed hostile candidates to win the party nomination. For instance, in a much-publicized episode discussed in plaintiffs' affidavits, a grand dragon of the Ku Klux Klan campaigned for and won the 1980 Democratic party nomination for Congress in the San Diego area while the Democratic county central committee remained powerless to oppose him. *See* Declaration of Edmond Constantini.

In sum, the State has failed to show that section 11702 serves party cohesion. Thus, even if we considered the State's interest in preventing parties from undermining party cohesion to be compelling or legitimate, we would conclude that the State has failed to show that the interest is furthered by banning preprimary endorsements.

B

The State further claims that the ban on preprimary endorsements is justified by the governmental interests in protecting party adherents from confusion and undue influence when they vote in primaries. The State asserts that voters might be confused if they are not sheltered from the views of party leadership.[30] The State's apparent concern is that voters will be discouraged from participating in the primary election because they will view the party-endorsed candidate as the party's foreordained choice. The State also argues that preprimary endorsements from the party leadership will exert undue influence on party members when they vote in primaries.

[18] With the exception of cases upholding laws carefully tailored to proscribe fraud and corruption, *see, e.g.*, *Buckley*, 424 U.S. at 26-27, the State cites no authority for the proposition that the government can regulate the flow

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[30]Legislative findings preceding § 11702 report "considerable public doubt and confusion" arising from the promulgation of deceptive endorsements. Cal. Elec. Code § 11701(3). The California courts that have enforced § 11702 have stated that minimizing voter confusion was the principal motive behind the enactment. *See People v. Crutcher*, 262 Cal. App.2d 750, 752-53 (Cal. Ct. App. 1968); *California Democratic Council v. Arnebergh*, 233 Cal. App. 2d 425, 430 (Cal. Ct. App. 1965), *appeal dismissed*, 382 U.S. 202 (1965).

of information between political associations and their members. Prohibiting the governing body of a political party from supporting some candidates and opposing others patently infringes both the right of the party to express itself freely and the right of party members to an unrestricted flow of political information. *See Pacific Gas & Electric*, 106 S. Ct. at 907 ("The First Amendment protects the public's interest in receiving information"); *cf. Brown v. Hartladge*, 456 U.S. 45, 60 (1982) ("[by] *the free exchange of ideas* . . . the people are to choose . . . between candidates for political office") (emphasis added). We cannot accept the State's claim that denying voters access to the views of party leadership somehow enhances their First Amendment rights.

[19] In any case, we would reject the "highly paternalistic approach" of statutes like [section 11702] which restrict what the people may hear." *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 770 (1976). The State's argument that preprimary endorsements confuse and unduly influence voters rests upon a lack of trust in the ability of voters to think and act for themselves. "But '[o]ur cases reflect a greater faith in the ability of individual voters to inform themselves about campaign issues.'" *Tashjian*, 107 S. Ct. at 552 (quoting *Anderson*, 460 U.S. at 797). "[T]he people in our democracy are entrusted with the responsibility for . . . evaluating the relative merits of conflicting arguments . . . . [and] the source and credibility of the advocate." *Bellotti*, 435 U.S. at 791-92; *cf. Police Department v. Mosely*, 408 U.S. 92, 95 (1972) ("government has no power to restrict expression because of its message, its ideas, its subject matter, or its content"). "'A State's

claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism.'" *Tashjian*, 107 S. Ct. at 552 (quoting *Anderson*, 460 U.S. at 798).

Simply put, the State has given voters too little credit. It has made no showing in support of its charge that voters will be confused and overly influenced by party endorsements. In contrast, plaintiffs' affidavits confirm what is implicit in the First Amendment: when the people are exposed to a public debate that is "uninhibited, robust, and wide-open," *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964), they are fully capable of thinking for themselves. Plaintiffs have made a showing that voters understand that endorsements are intended to counsel, not preempt their votes, and that the primary victor alone constitutes the general election candidate of the party. Party endorsements are unrestricted in all other states, *see supra* at n.27; and plaintiffs' affidavits show that the electorate of these states typically considers the party's imprimatur as simply one relevant datum in the pool of information on rival candidates for the party nomination. *See* Declarations of Donald Fraser Malcolm Jewell, and Bert Coffey. Thus, the State's fear that party members will blindly rubber-stamp the party's endorsement is speculation not borne out by either experience or common sense. Moreover, we agree with the Second Circuit that "a state certainly does not have a compelling interest in shielding from confusion those voters who engage in unthinking and Pavlovian reliance on party labels." *Tashjian*, 770 F.2d at 284, *aff'd* 107 S.Ct. 544. To the extent that the risk of confusion arises because the

central committees carry the official imprimatur of the State, the State's own statutes—not the inherent coerciveness of party endorsements—are the root of the problem. California's ban on preprimary endrosements is a form of paternalism that is inconsistent with the First Amendment.

In sum, California's asserted interests—protecting the parties from factionalism and protecting the voters from confusion and undue influence—are insufficient to justify its ban on preprimary endorsements. Accordingly, we hold that section 11702 violates the First Amendment.

CONCLUSION

The judgment of the district court invalidating the provisions of the California Elections Code that regulate the selection of state central committee members, limit the term of office of committee chairs, and prohibit state and county central committees from endorseing, supporting, or opposing candidates in party primary elections is AFFIRMED.

ATTORNEY GENERAL

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE	)	NO. 84-1851 DC No. C-83-5599-MHP

FOR PARTY RENEWAL,)
)
Plaintiffs-Appellees,)
)
v.)
)
MARCH FONG EU, Secretary) (Filed
of State of the State of) Nov. 19, 1987)
California; JOHN VAN DE)
KAMP, Attorney General of the)
State of California; ARLO)
SMITH, District Attorney of San)
Francisco County, et al.,)
)
Defendants-Appellants.)
)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that defendant-appellant March Fong Eu, Secretary of State of the State of California, hereby appeals to the Supreme Court of the United States from the final judgment of the United States Court of Appeals for the Ninth Circuit entered on October 29, 1987 affirming summary judgment against defendants entered by the U.S. District Court, Northern District of California.

This appeal is taken pursuant to 28 U.S.C. § 1254(2).

DATED: November 18, 1987

JOHN K. VAN DE KAMP
Attorney General of the State
California

N. EUGENE HILL
Assistant Attorney General

/s/ Geoffrey L. Graybill
Deputy Attorney General

Attorneys for Defendants-
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1515 K Street
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DECLARATION OF SERVICE BY MAIL

Case Name: San Francisco Co. Democratic Central Comm., et al., v. March Fong Eu — No. 84-1851

I declare:

I am employed in the County of Sacramento, California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 1515 K Street, P. O. Box 944255, Sacramento, California 94244-2550.

On November 18, 1987, I served the attached

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California, addressed as follows:

PAUL FLUM
MORRISON & FOERSTER
Attorneys at Law
California Center
345 California Street
San Francisco, California 94104-2105

I declare under penalty of perjury the foregoing is true and correct, and that this declaration was executed at Sacramento, California on November 18, 1987.

Carol Clanton /s/ Carol Clanton
(Signature)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL, Plaintiffs-Appellees, v.	NO. 84-1851 DC NO. C-83-5599-MHP

MARCH FONG EU, Secretary of State of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; LEO HIMMELSBACH, District Attorney of Santa Clara County; ARLO SMITH, District Attorney of San Francisco County, et al.,

Defendants-Appellants.

AMENDED
NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that defendants-appellants March Fong Eu, Secretary of State of the State of California; John K. Van de Kamp, Attorney General of the State of California; Leo Himmelsbach, District Attorney of Santa Clara County and Arlo Smith, District Attorney of San Francisco County, hereby appeal to the Supreme Court of the United States from the final judgment of the United States Court of Appeals for the Ninth Circuit entered on August 18, 1987 as amended on October 29, 1987 affirming summary judgment against defendants entered by the U.S. District Court, Northern District of California.

This appeal is taken pursuant to 28 U.S.C. § 1254 (2).

DATED: January 13, 1988.

JOHN K. VAN DE KAMP
Attorney General of the State
of California

N. EUGENE HILL
Assistant Attorney General

/s/ Geoffrey L. Graybill
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DECLARATION OF SERVICE BY MAIL

Case Name: San Francisco Co. Democratic Central Comm., et al., v. March Fong Eu, et al. No. 84-1851

I declare:

I am employed in the County of Sacramento, California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 1515 K Street, P.O. Box 944255, Sacramento, California 94244-2559.

On January 13, 1988, I served the attached

(Date)

AMENDED NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California, addressed as follows:

PAUL FLUM
MORRISON & FOERSTER
Attorneys at Law
California Center
345 California Street
San Francisco, California 94104-2105

I declare under penalty of perjury the foregoing is true and correct, and that this declaration was executed at Sacramento, California on January 13, 1988.

(Date)

Marsha L. Bierer
(Typed Name)

/s/ Marshal L. Bierer
(Signature)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE, LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,	)	NO. 84-1851 DC CV 83-5599 MHP
Plaintiffs-Appellees.	)	
vs.	)	(filed November 17, 1987)
MARCH FONG EU, Secretary of the State of the California, JOHN K. VAN DE KAMP, Attorney General of the State of California, et al.,	)	
Defendants-Appellants.	)	

ORDER ON MOTION FOR STAY OF MANDATE

(Rule 41 (b) Fed.R.App.P.)

Upon due consideration of appellants motion for stay of the mandate of this Court in the above cause pending the filing, consideration and disposition by the Supreme Court of the United States of a petition for writ of certiorari, such petition to be filed in the Clerk's Office of the Supreme Court of the United States on or before January 27, 1988,

IT IS ORDERED that the motion for stay of mandate be, and the same is hereby denied.*

/s/ William A. Norris
United States Circuit Judge

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* In the event that the motion for stay of mandate and the petition for writ of certiorari are granted, then this stay will continue pending the final disposition of the case by the Supreme Court of the United States.

SAN FRANCISCO DEMOCRATIC CENTRAL COMMITTEE et al. v. MARCH FONG EU et al.

Table of Code Provisions
Regulating California Democratic Party Organizations
Not Challenged or
Invalidated In This Litigation

Elections Code	§ 8660.1	Requires state central comm. to notify members of their appointment
	§ 8660.2	Prescribes the form of the notice
	§ 8660.3	Provides that party's former statewide officeholders are members of the state central comm.
	§ 8662	Establishes basis for membership for member who qualifies on more than one basis
	§ 8666	Provides for method of authentication of membership
	§ 8668	Requires county central comm. chairs to notify state central comm. of identity of county comm. members
	§ 8670	Requires state chair to notify each state comm. member of his membership & to inform them of prescribed proxy system
	§ 8671	Requires current party affiliation for membership

§ 8672	Authorizes state central comm. to remove a member who disaffiliates or supports a nominee of another party
§ 8673	Defines the cirmustances in which a vacancy in membership exists
§ 8674	Prescribes methods of filling vacancies on state central comm.
§ 8675	Additional methods of filling vacancies
§ 8676	Requires state central comm. to provide forms for appointment of members
§ 8677	Authorizes state cen. comm. members to appoint three associate members
§ 8678	Requires that members be registered voters
§ 8710	Prescribes the date time and place of the first meeting of the state cen. comm. after a general election
§ 8711	Provides method for selection site for meeting of state cen. comm.
§§ 8740-8744	Prescribes method of attendance at state cen. comm. by proxy
§ 8770	Prescribes order of business for state cen. comm. meetings

§ 8771	Requires immediate appointment of a comm. on proxies and credentials
§ 8772	Requires selection of officers and empowers such officers
§ 8773	Authorizes state cen. comm. to delegate any of its powers to an executive comm.
§ 8774	Requires that the chair and vice chair be from the same section of the state and that the chair alternate between the southern and northern sections of the state
§ 8775	Authorizes comm. to prescribe dues for its members and to remove members for nonpayment
§ 8776	Requires state cen. comm. to conduct the party's campaign for its nominees in the general election
§ 8777	Prescribes quorum of comm. as majority of entire membership
§ 8778	Authorizes comm. to choose a manual of parliamentary procedure
§§ 8820-8823	Prescribe number of members of county cen. comms.

§ 8823	Authorizes county cen. comms. to establish member districts and requires reapportionment thereof every decade
§§ 8824-8825	Provide full membership in county cen. comms. for resident nominees of the party
§ 8826	Authorizes appointment of alternates
§ 8827	Requires members of county cen. comms be affiliated with party at time of election or appointment
§ 8827.5	Allows member between ages of 18-21 not to be affiliated with the party although member must be registered to vote
§ 8828	Requires each county cen. comm. member to take and subscribe to the oath provided in Calif. Const.
§ 8829	Defines vacancy to include case where insufficient number of members are elected from a district
§ 8830	Further defines circumstances in which a vacancy occurs on a county cen. comm.
§ 8831	Authorizes removal of a county cen. comm. member who has more than 3 consecutive unexcused absences from meetings

§ 8832	Mandates that change of residence from district results in automatic resignation from county cen. comm.
§ 8823	Authorizes removal of county cen. comm. member who affiliates with another party or advocates election of member of another party
§ 8834	Specifies procedure to be followed after an appointment filling a vacancy
§ 8870	Requires election of a county cen. comm. at every direct primary election
§ 8871	Requires county clerk to compute the number of members of county cen. comm. to be alloted to each district
§ 8872	Requires candidates for county cen. comm. to file nomination papers per Code signed voters of district
§ 8873	Provides that where number of candidates for county cen. comm. do not exceed the number of members alloted to district the candidates are deemed elected
§ 8874	Prescribes requisite number of votes required for election to county cen. comm.

§ 8875	Provides that a vacancy occurs if a candidate dies on or before election when such a candidate is elected
§ 8920	Prescribes date and place for first meeting of county cen. comms.
§ 8921	Allows L.A. county cen. comm. to have first meeting in centrally located public auditorium
§ 8922	Mandates state Department of General Services to allow any county cen. comm. to hold one meeting per month in a state building without charge
§ 8923	Requires county cen. comm. meetings be accessible to physically handicapped
§ 8940	Requires county cen. comm. to conduct party campaign under direction of state cen. comm.
§ 8941	Validates rules adopted by county cen. comms. prior to enactment of this section and authorizes adoption of rules for specific purposes
§ 8942	Provides term of county cen. comms. and authorizes services for benefit of the party

§ 8943	Authorizes majority of county cen. comm. members to call a meeting on default by chairperson
§ 8944	Requires county clerk to identify the newly elected chair of a county cen. comm. and to notify the Secretary of State thereof
§ 8945	Authorizes county cen. comms. to establish member dues not to exceed $24

No. .....

IN THE SUPREME COURT OF
THE UNITED STATES

October Term, 1987

MARCH FONG EU, Secretary of State of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; LEO HIMMELSBACH, District Attorney of Santa Clara County;

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Appellees.

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

DECLARATION OF CHARLES H. BELL, JR.

I, Charles H. Bell Jr., declare as follows:

1. I am a partner in the law firm of Nielsen, Merksamer, Hodgson, Parrinello and Mueller which provides general counsel to the State Central Committee of the California Republican Party. I am the partner principally responsible for performing the duties of general counsel to the Republican State Central Committee.

2. I have been authorized by the chairperson of the State Central Committee to provide this declaration concerning the activities of the Committee on the issue of pre-primary endorsements by official party organizations.

3. The Committee's Task Force on Political Reform, Elections and Reapportionment has submitted some recommendations to the rules committee concerning policy on pre-primary endorsements by official party organizations. A true and correct copy of the recommendations is attached hereto as Exhibit A.

3. The rules committee has authorized preparation of proposed amendments to the by-laws of the Committee pursuant to the recommendations of the Task Force.

4. The rules committee will consider approval of the proposed amendments for submittal to and adoption by the full State Central Committee just prior to the meeting of Committee on February 19-21, 1988.

I declare under penalty of perjury that the foregoing statements are true and correct of my personal knowledge.

Executed at Sacramento, California on January 26, 1988.

/s/ CHARLES H. BELL, JR.

EXHIBIT A

RECOMMENDED ENDORSEMENTS POLICY FOR THE CALIFORNIA REPUBLICAN PARTY

The Task Force on Political Reform, Elections and Reapportionment, having duly considered the Ninth Circuit Court of Appeals' decision *San Francisco Democratic Central Committee v. Eu*, 826 F.2d 814 (9th Cir. 1987), and the advice and opinions of Party regulars, affiliated volunteer associations and elected Republican officials and their staff, hereby recommends that the California Republican Party, (hereinafter "Party"), through its State Central Committee, adopt the following policies by appropriate amendments to its Bylaws and Rules, regarding the subject of endorsing candidates for elected partisan offices:

1. The California Republican Party and its State and County Central Committees shall not endorse, support or oppose any candidate for elected partisan office, except in special elections (hereinafter the "No Partisan Endorsements Rule").

2. The No Partisan Endorsements Rule shall:

a) be adopted as a permanent Bylaw by all the Party's State and County Central Committees;

b) be incorporated as part of a charter to be issued by the Party's State Central Committee to each Party County Central Committee;

c) not be waived or suspended by any Party County Central Committee; and

d) not be waived or suspended by the Party's State Central Committee, except at its biennial organizational meeting for no longer than the succeeding two year period, and then only by a favorable vote

of at least 66-2/3% of a quorum of members of the Committee present in person or by proxy.

3. In the event any Party County Central Committee violates the No Partisan Endorsements Rule, the State Central Committee may impose sanctions on the County Committee, including but not limited to:

a) Public announcement by the Chairman or other designated official of the State Central Committee that the endorsement in question was unauthorized and void;

b) An injunction enjoining the County Committee(s) and candidate(s) involved from publicizing the endorsement, and compelling the Committee to set aside its unauthorized endorsement; or

c) Revocation of the County Committee's Charter and its right to use the name "Republican" as part of its title.

4. In the event the Party's State Central Committee waives or suspends the No Partisan Endorsement Rule, the following procedures will apply to partisan endorsements during the time of the waiver or suspension:

a) The Party may exercise its authority to endorse or oppose a candidate for elected partisan office only by a favorable vote of at least 66-2/3% of a quorum of members of the applicable Central Committee(s) present in person or by proxy.

b) The State Central Committee shall not endorse or oppose any candidate for partisan elected office at the legislative or local level unless and in concurrence with the County Central Committee(s) having jurisdiction over the affected district.

c) County Central Committees will not endorse, or oppose any candidate for partisan state-wide office,

or any candidate for other elected partisan office who does not represent part or all of that county. Where the holder of the office would represent more than one county, no County Central Committee may endorse or oppose a candidate for such office unless all County Central Committees having jurisdiction in part or in whole within the affected district concur in the endorsement, support or opposition.

d) Endorsement or opposition will not be made until after notice is given and a hearing is offered to the affected candidates.

5. The Party may endorse or oppose any Republican candidate running for partisan elected office in a special election in accordance with the following procedure:

a) During the — days after the Secretary of State announces the special election,

6. The County Central Committee or Committee having jurisdiction over the district involved may endorse or oppose any Republican candidate for the office by a favorable vote of at least 66-2/3% of a quorum of members present in person or by proxy of each Committee having jurisdiction over any part of said district;

a) Endorsement or opposition will not be made by the County Committee(s) until after notice is given and an opportunity to be heard is offered eo the announced candidates; and

c) In the event the County Central Committee or Committees having jurisdiction over the district involved do not endorse or oppose a candidate within —days of the announcement of the election, the State Central Committtee, by a vote of at least 75% of a quorum of its Board of Directors, may endorse or oppose any Republican candidate for the office.

No. ————

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1987

MARCH FONG EU, Secretary of State of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; LEO HIMMELSBACH, District Attorney of Santa Clara County;

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Appellees.

ON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

DECLARATION OF BRIGITTE TERI BURNS

I, Brigitte Teri Burns, declare as follows:

1. I am a member of the executive board of the State Central Committee of the California Democratic Party.

2. I was present and participated in the action of the executive board on January 9, 1988, when it adopted amendments to the by-laws of the Committee regarding pre-primary endorsements.

3. I was informed of the complete text of the amendments prior to the vote thereon by the board.

4. Exhibit A attached hereto is a true, correct and complete copy of the amendments to the by-laws concerning pre-primary endorsements which were adopted on January 9, 1988.

I declare under penalty of perjury that the foregoing statements are true and correct of my personal knowledge.

Executed at Sacramento, California on January 26, 1988.

/s/ Brigitte Teri Burns

EXHIBIT A

ARTICLE —

Endorsement of Candidates for
Partisan and Nonpartisan Office

Section 1. PRESIDENT OF THE UNITED STATES

a. The State Central Committee of the California Democratic Party, Democratic County Central Committees, and all official units of the California Democratic Party shall not endorse candidates for President of the United States or candidates for delegates to the Democratic National Convention until the Democratic National Convention has been held.

b. Individual members of the organizational units identified in subsection (a) of this section are in no way precluded from endorsing a candidate for the Democratic presidential nomination or candidates for delegates to the Democratic National Convention. The party office of members making such an endorsement may be indicated in that endorsement for identification purposes only.

Section 2. PARTISAN PUBLIC OFFICES OTHER THAN PRESIDENT

a. Endorsement of candidates for the Democratic nomination to any partisan office other than President shall take place during a duly noticed "endorsing convention" of This Committee held after the closing date for filing declarations-of-intent-of-candidacy for the offices to be voted upon. (See subsection (c) below for an exception to this provision.)

b. This Committee shall make every reasonable effort to assure that with respect to each and every office embraced by the provisions of the subsection (a) above there shall be at least one candidate who has filed, who wishes the party's endorsement, and who is worthy of consideration for that endorsement.

c. Endorsement in any given primary race shall be made by an "endorsing caucus" of members of This Committee resident in the geographic area covered by the office in question and shall be subject to ratification by the full membership of This Committee, except in the case of the Board of Equalization which shall be treated as a state wide office.

1) Endorsing caucuses shall be chaired by persons designated by the Chair of This Committee. In addition to presiding over the endorsing caucus in conformity with these bylaws and with the principles of fairness to which this Party is committed, persons designated as Chairs shall be responsible—upon the advice and assistance of the State Chair--for publicising, in the relevant local media of communication, the results of the endorsing and ratifying process with respect to the candidate(s) considered by the caucus he/she chairs.

(2) Endorsing caucuses shall be held at places and times during the endorsing convention which are designated by the Chair of This Committee consistent with achieving an orderly, convenient and fair process.

(3) Each candidate entered in a forthcoming Democratic primary and subject to the provisions of this section may request to be considered for the Democratic Party

endorsement, and may request to appear before the relevant endorsing caucus.

(4) Each candidate seeking the endorsement of the California Democratic Party shall submit to This Committee, in advance of the endorsing convention, a nonreimbursable filing fee of $100 in the case of statewide public offices and $50 in all other cases. (see Article X: Sec. 4, By-Laws and Rules of the California Democratic Party 1985-87)

(5) Fifty percent plus one of the credentialed members of an endorsing caucus shall constitute a quorum.

(6) Voting at all the endorsing caucuses shall be by a roll call vote.

(7) Members of an endorsing caucus shall be presented with a "no endorsement" option on all endorsement votes.

(8) No endorsing caucus may endorse more candidates than there are seats for the office in question.

(9) Endorsement of an incumbent candidate seeking reelection shall require a vote of simple majority (50%+1) of the caucus members present and voting. Endorsement of all non-incumbent candidates shall require 60% of those caucus members present and voting. In the event that on a given endorsing vote neither a candidate nor a "no endorsement" receives the required majority, then a new vote shall be taken wherein the name of any withdrawn candidate or, if none has withdrawn, the name of the candidate with the lowest number of votes on the previous vote shall no longer be put before the members of the endorsing

caucus. Before any vote, each candidate shall be given an opportunity to withdraw in favor of some other candidate.

d. Decisions of the endorsing caucus shall be subject to ratification by the full membership of This Committee, except with respect to candidates for statewide public office.

(1) In the case of a statewide public office, This Committee's ratification of the endorsing caucus' decision shall be assumed, since the endorsing caucus is comprised of all members of This Committee.

(2) Ratification of endorsing caucus decisions on which no objection has been filed under the provisions of (3) below may be achieved by a vote of Acclamation which embraces as many such decisions as deemed appropriate by the Chair of This Committee.

(3) Formal objection to the ratification of an endorsing caucus decision must be signed by at least 200 credentialed members of This Committee and filed with the State Chair one hour in advance of the period set side for ratification votes.

(4) Consideration by This Committee of endorsing caucus decisions to which objection has been filed under (3) above shall occur prior to voting on the ratification of other caucus decisions and shall include the presentation of arguments for and against ratification.

(5) In the event fifty percent plus one of the members of This Committee present and voting fail to vote to ratify an endorsing caucus decision to which formal objection has been filed, the endorsing caucus decision shall be considered "vacated."

(6) The California Democratic Party shall be considered to have made "no endorsement" where a caucus decision has been vacated unless the members of This Committee decide to endorse a substitute candidate.

(a) Substitute candidates may be nominated from the floor immediately following the vacating of the relevant endorsing caucus.

(b) Substitute candidates must have been considered for endorsement by the relevant endorsing caucus.

(c) To become the endorsed candidate of the California Democratic Party a substitute candidate must receive 75% of the vote of the members of This Committee present and voting.

e. In the case of a special election where an endorsement cannot be made at the biennial endorsing convention of the California Democratic Party, the Chair of This Committee shall convene an endorsing caucus of the members of This Committee resident in the relevant district. Such caucus shall proceed in accordance with the relevant procedures provided for in the subsection (c) above and its decision shall be subject to ratification by the Executive Board of This Committee under procedures consistent with those identified in Subsection (d) above.

f. Only Democratic candidates for nomination to partisan public office who have been endorsed in accordance with the foregoing provisions shall be deemed official candidates of the California Democratic Party and be entitled to the privileges and benefits associated therewith.

g. To assure the effectiveness of the Democratic Party's endorsing process, This Committee: (1) hopes and expects that all of its members will make every reasonable effort to recruit and encourage persons of the highest quality to seek the Party's nomination and endorsement in races for partisan public office; (2) hopes and expects œthat all of its members will make every reasonable effort to see that endorsed candidates receive the Party's nomination and, in due course, are victorious in the general election; (3) hopes and expects that all of its members will make every reasonable effort to see that those aspirants for the Party's endorsement who fail to receive that endorsement withdraw as candidates in the Democratic primary and encourage a unified effort on behalf of the endorsed candidates; and (4) intends to protect the integrity of its endorsing power by precluding—including through the use of legal process—other entities from representing themselves as purveyors of an official Democratic Party endorsement.

h. To assure the effectiveness of the Democratic Party's endorsing process, This Committee is committed to the principle that the Democratic Party as an organization shall speak with one voice with respect to the endorsement of candidates for nomination to partisan public office. It is also committed to the principle that it (The State Central Committee of the Democratic Party) shall be broadly and fairly representative of the various components of the Party.

(1) The Executive Board of This Committee shall consider and may approve a request for a variance from these provisions submitted by a County Central Committee wishing to render an independent endorsement of a 'favorite son'' or ''favorite daughter'' candidate for the Democratic nomination to statewide partisan public office. In the event such a variance is granted, the endorsed candidate shall not be considered, and shall not be presented as the endorsed candidate of the California Democratic Party unless he/she is also endorsed in accordance with the procedures described in the foregoing sections of this Article.

(2) Any official unit or any Democratic County Central Committee of the California Democratic Party which renders an independent, unauthorized endorsement of a candidate for partisan public office shall forfeit its right to representation on This Committee and the privileges and benefits which may be attached thereto for a period of 12 months from the time it renders such an endorsement, or the remainder of the term of the current State Central Committee, whichever is longer.

i. ''Pre-endorsing Conferences'' shall be held at the regional level prior to the State endorsing convention.

(1) The time and place of each pre-endorsing conference shall be determined by the State Chair in consultation with the Party's Regional Directors.

(2) In the event that any Senate District or Congressional District falls into more than one Region, the State Chair shall assign those districts to a single regional pre-endorsement conference for the purposes of making the recommendation set forth in this section, due consideration being given to conflicting conference dates so as to allow for full participation. When an eligible voter in

a Senate or Congressional District does not reside in the designated Region for that office, a written, signed statement from the eligible voter shall be recorded as part of the roll call vote if received by the designated Regional Director prior to the beginning of roll call for the vote in the designated Region.

(3) The State Chair shall be responsible for providing each voting participant with notification of the time and place of the relevant pre-endorsing conference. Regional Directors shall be responsible, upon the advice and assistance of the State Chair, for generally publicizing pre-endorsement conferences.

(4) Each pre-endorsing confetrence shall be chaired by the relevant Regional Director or, in the event that there is no Regional Director available for this purpose or the Regional Director is a candidate for nomination to a partisan public office, by a person designated by the State Chair. The State Chair shall designate a Secretary for each Regional pre-endorsing conference.

(5) Voting participants at each pre-endorsing conference shall be all members of This Committee resident in the district; all County Committee members resident in the district; a representative resident in the district of each Democratic Club or other chartered Party organization with membership in the District. No proxy voting shall be allowed at pre-endorsing conferences. It shall be the responsibility of each Regional Director, with the assistance of the relevant County Committee Chair(s) and Assembly District Committee Chair(s) to identify by name all present who will be eligible voters at his/her regional pre-endorsing conference and to transmit the names

of all such voters to the State Chair, along with the Assembly District, Senate District and Congressional District in which each resides 30 days before the pre-endorsing conference.

(6) Each candidate for the Democratic nomination to a partisan, non-statewide public office whose jurisdiction extends into, or is included in a given Region, shall be permitted to address the the relevant pre-endorsing conference or to designate a representative to address said conference.

(7) Any voting participant may offer for conference consideration the name of a candidate for the Democratic nomination to a partisan, non-statewide public office whose jurisdiction extends into, or is included within the given Region.

(8) Once the names of candidates for a given office have been thus offered, a single roll call vote shall be taken as to the preferences of the eligible voting participants. A "no preference" option shall be available at the time of each vote.

(9) Eligibility to vote with respect to a given office shall be limited to those conference participants resident in the election district in question.

(10) The Chair of the pre-endorsing conference is responsible for transmitting, in writing, the results of all votes taken within three days of the pre-endorsing conference.

(11) A candidate's name may be placed on the consent calendar of This Committee's endorsing convention

upon receiving a 70% vote at a pre-endorsing conference. The consent calendar shall be approved by a simple majority (50%+1). Upon approval of the consent calendar the candidate shall become the endorsed candidate of the Democratic Party.

A name may be removed from the consent calendar by any five (5) members of This Committee resident in the District in question by filing a letter of opposition with the State Chair no later than ten (10) days prior to the State Endorsing Convention. If a name is removed from the consent calendar, the By-laws of This Commttee regarding endorsements shall apply.

j. All winners of the Democratic primaries will be deemed to be the endorsed candidates of This Committee, unless 75% of the members of its Executive Board, present and voting, object.

k. The only form of endorsement of a candidate for Partisan Public Office is an "Official Endorsement" as provided for under these by-laws. Unless a candidate has received an "Offcial Endorsement" all motions of support, recommendation, or other expressions of approval, no matter how denominated, shall be out of order at any meeting of This Committee, its Executive Board, its Regions, its Assembly District Committees or its caucuses.

1. This Committee shall not endorse candidates for County Central Committees.

87-1269

No. .....

FILED

JAN 27 1988

JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1987

MARCH FONG EU, Secretary of State of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; LEO HIMMELSBACH, District Attorney of Santa Clara County;

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

VOLUME II OF THE APPENDIX TO THE JURISDICTIONAL STATEMENT

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FOR PUBLICATION

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851

DC No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Plaintiffs-Appellees,

v.

MARCH FONG EU, Secretary of State of the State of California; JOHN VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County, et al.,

Defendants-Appellants.

Appeal from the District Court for the
Northern District of California
Hon. Marilyn Hall Patel, District Judge, Presiding

OPINION

(Filed June 18, 1986)

Argued and Submitted May 15, 1984—San Francisco, CA
Withdrawn from Submission August 5, 1985
Resubmitted November 27, 1985

Before: WRIGHT, SKOPIL and NORRIS, Circuit Judges

NORRIS, Circuit Judge:

This case involves a First Amendment challenge to various sections of the California Elections Code. The challenged sections specify the membership of the state central committees of ballot-qualified political parties and the term of office of committee chairs, and prohibit both state and county central committees from endorsing candidates in party primaries.

Plaintiffs are various county central committees of the Democratic and Republican parties, the state central committee of the Libertarian party, members of these and other party central committees, and various other groups and individuals active in partisan politics in California. They sued the Secretary of State and Attorney General of California and the district attorneys of various counties (hereinafter, "the Secretary") for declaratory and injunctive relief under 42 U.S.C. § 1983 seeking to vindicate their asserted First Amendment right to endorse candidates running in California's direct primary elections and to structure and conduct their internal affairs free of unjustified interference by the state.[1]

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[1] The First Amendment is made applicable to the states through the Fourteenth Amendment. *See, e.g., Edwards v. South Carolina*, 372 U.S. 229, 235 (1963); *Schneider v. State*, 308 U.S. 147, 160 (1939).

In the first count of their first amended complaint, plaintiffs challenge the constitutionality of Cal. Elec. Code § 11702, which prohibits state and county central committees from endorsing, supporting, or opposing candidates for partisan office in direct primary elections. Plaintiffs' second count challenges sections of the Elections Code and the state constitution that prohibit central committees from endorsing candidates in nonpartisan county, city and school elections. Plaintiffs' third count challenges Code sections that prescribe the membership of state central committees, the term of office of state committee chairpersons, the time and place of state and county central committee meetings, and the dues to be paid by county committee members.

Plaintiffs moved for summary judgment on all three counts. In response, the Secretary moved to dismiss the amended complaint under Fed. R. Civ. P. 12(b)(1) and (6) and cross-moved for summary judgment. The district court granted summary judgment on plaintiffs' first count, ruling that section 11702's ban on preprimary endorsements violated the First Amendment. The court stayed all proceedings on plaintiffs' second count under the abstention doctrine of *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941). The court granted partial summary judgment on plaintiffs' third count, ruling that the sections prescribing the membership of state central committees and the term of their chairs violated the First Amendment.[2] The court, however, denied plaintiffs' mo-

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[2] The district court invalidated the following sections: Cal. Elec. Code §§ 8660, 8661, 8663-67, 8669 (Democratic State Central Committee); §§ 9160, 9160.5, 9161, 9161.5, 9162-64 (Republican State Central Committee) (West Supp. 1984); § 9274 (Republican State Central Committee Chairman); and § 9816 (Peace & Freedom State Central Committee Chairperson) (West 1977).

tion for summary judgment with respect to those Code sections regulating the time and place of committee meetings and county committee dues. The court also denied in all respects the Secretary's motion to dismiss and cross-motion for summary judgment.

Although the district court did not finally dispose of all issues with respect to all parties, it directed the entry of final judgment for plaintiffs under Fed. R. Civ. P. 54(b) on the first count and as to those claims in the third count decided in plaintiffs' favor.[3] Accordingly, we have jurisdiction to hear the Secretary's appeal under 28 U.S.C. § 1291 (1982).

I

Plaintiffs contend that California's political parties and their governing bodies—the state and county central committees—are voluntary associations entitled to the full protection of the First Amendment. They argue that California's prohibition of preprimary endorsements and the state's regulation of party structure and internal affairs abridge their freedom of political expression and association.[4] In response, the Secretary argues that the

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[3] We review a summary judgment *de novo*. *Lojek v. Thomas*, 716 F.2d 675, 677 (9th Cir. 1983). Summary judgment is appropriate if "there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(b). We also review *de novo* the district court's denial of the Secretary's motion to dismiss under Fed. R. Civ. P. 12(b)(1) & (6) for want of subject matter jurisdiction and for failure to state a claim upon which relief may be granted. *See, e.g., Trerice v. Pedersen*, 769 F.2d 1398, 1400 (9th Cir. 1985).

[4] Plaintiffs also claim that the state's regulation of ballot-qualified parties violates their rights to equal protection of the laws under the Fourteenth Amendment. It is unnecessary to reach this claim.

state and county central committees of ballot-qualified political parties in California do not enjoy First Amendment status because they are public entities, not private associations. In the alternative, the Secretary argues that the challenged provisions of the Election Code pass First Amendment muster because they are narrowly drawn regulations that serve compelling state interests.

"Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association." *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957). Because "[e]xercise of these basic freedoms . . . has traditionally been through the media of political associations," *id.*, political parties as well as individual party adherents enjoy First Amendment rights. *See Democratic Party v. Wisconsin ex rel. La Follette*, 450 U.S. 107 (1981); *Cousins v. Wigoda*, 419 U.S. 477 (1975).[5] Moreover, "[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." *Sweezy*, 354 U.S. at 250; *see Republican Party v. Tashjian*, 770 F.2d 265, 278 (2nd Cir. 1985), *prob. juris noted*, 106 S. Ct. 783 (1986). Finally, courts have "placed the internal workings of a political party squarely within the protection of the First Amendment." *Ripon Society Inc. v. National Republican Party*, 525 F.2d 567, 586 (D.C.Cir. 1975), *cert. denied*, 424 U.S. 933 (1976).

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[5] *See also* Weisburd, *Candidate-Making and the Constitution: Constitutional Restraints on and Protections of Party Nominating Methods*, 57 S.Cal.L.Rev. 213, 265 (1984) [hereinafter Weisburd, *Candidate-Making and the Constitution*] ("parties as parties have associational rights").

In this case we must apply these settled First Amendment principles to the restrictions imposed on California political parties by various provisions of the California Elections Code. To place the important constitutional questions presented by this appeal into perspective, we will first provide an overview of state regulation of political parties in California.

Like our national political parties,[6] California's political parties were originally unregulated voluntary associations of individuals "governed largely by custom and usage." *Unger v. Superior Court*, 37 Cal.3d 612, 615, 692 P.2d 238, 209 Cal. Rptr. 474 (1984) (*Unger II*); *see also* 59 Ops. Cal. Atty. Gen. 60 (1976); 23 Ops. Cal. Atty. Gen. 119, 120 (1954) (citing *Spelling v. Brown*, 122 Cal. 277, 279, 55 P. 126 (1898)). These voluntary associations "fix[ed] membership criteria, nominat[ed] candidates for public office, conduct[ed] their campaigns, and shap[ed] their platforms" with neither recognition nor interference from the state. Friedman, *Reflections Upon the Law of Political Parties*, 44 Cal. L. Rev. 65, 66 (1956); *see also Spier v. Baker*, 120 Cal. 370, 380, 52 P. 659 (1898). Internal party decisions were generally made at party conventions where choices as important as "who shall represent [the] party on the election day ballot [were] left exclusively to a select group of its leaders." J. Owens, E. Costantini & L. Weschler, *California Politics and*

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6 *See, e.g., O'Brien v. Brown*, 409 U.S. 1, 4 (1972) (per curiam) ("our national political parties first came into being as voluntary associations of individuals"); *see also* A. De Tocqueville, 2 *Democracy in America* 129 (Bradley, ed. 1954); D. Broder, *The Party's Over: The Failure of Politics in America* 172 (1971).

Parties 78 (1970) [hereinafter, *"California Politics"*]. At the turn of the century, Progressive Republicans, led by Hiram Johnson, set out to replace this prevailing laissez-faire regime with one ostensibly designed to democratize and purify the parties by rescuing them from the stranglehold of wealthy special interests.[7] *See Assembly Interim Committee on Elections and Reapportionment*, Report on Political Party Organization 7, *reprinted in* 1 Appendix to Journal of the Assembly (1963).

Spurred on by the Progressive reformers, the state legislature took the first—and most fundamental—step toward democratizing political parties by enacting a direct primary law, which transferred the power to nominate candidates from party organizations to the voters themselves. *See Hart v. Jordan*, 168 Cal. 321, 143 P. 537 (1914); *Katz v. Fitzgerald*, 152 Cal. 433, 93 P. 112 (1907); *see also California Politics, supra* at 35. As part of the same reform movement (*see* Opinion, Legislative Counsel of California, February 23, 1978, Excerpt of Record 465), the California legislature required political parties to

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7 The most notorious special interest and the chief impetus to reform was the Southern Pacific Railroad Company, nicknamed "the Octopus" because of its allegedly ubiquitous corrupting influence on state government. *California Politics, supra* at 32. According to one commentator, the Southern Pacific "literally ran the state's politics." *Id.* at 31.

form state and county central committees and adopted rules for party governance.[8]

The Elections Code provisions regulating party governance are byzantine in their complexity[9] and vary in extent and detail from party to party. *See, e.g.*, Cal. Elec. Code §§ 8500-8945 (Democratic Party), 9000-9510 (Republican Party), 9600-9745 (American Independent Party), 9750-9855 (Peace and Freedom Party). To take the Democratic party as an illustration, the Code establishes party central committees at the county, *id.* § 8820, and state-wide levels, *id.* § 8660; it dictates the size, membership, and apportionment of these committes, *id.* §§ 8660-8672 (state committee), 8820-8834 (county committees); it mandates the place and time of committee meetings, *id.* §§ 8710-8711, 8920-8922; it enjoins the state central committee to observe standard parliamentary procedure, *id.* § 8778; and it provides for the election of a state chair and vice-chair and requires that they be selected alternately from the northern and southern sections of the state. *Id.* § 8774.

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[8] The political reforms that the Progressives wrote into California law during the first two decades of this century parallel laws adopted in other states. Between 1890 and 1920, most states adopted "elaborate legal codes closely regulating the state parties' internal affairs: the codes generally stipulated what committees and conventions the parties must have, the procedures by which their members are selected, who may participate in making the parties' decisions, and what powers, if any, each party organ has over the others." A. Ranney, *Curing the Mischief of Faction: Party Reform in America* 18 (1975). For a thorough catalogue of the reform measures implemented in the other states, see J. Starr, *The Legal Status of American Political Parties I*, 34 Amer. Pol. Sci. Rev. 439 (1940).

[9] *See* Friedman, *supra* at 71 (describing the laws governing the parties as "an illogical, disordered pattern").

Most importantly, the Elections Code assigns to each party's state central committee the "statutory function of party leadership" by placing it "at the very helm of the party's general election campaign." 23 Ops Cal. Atty. Gen. 119, 123 (1954); *see* Cal. Elec. Code §§ 8776, 8940.[10] Similarly, the Code provides that the county committees "shall have charge of the party campaign under general direction of the state central committee." *Id.* §§ 8940 (Democratic Party), 9440 (Republican Party), 9740 (American Independent Party), 9850 (Peace and Freedom Party). Hence, at least in theory, the central committees constitute the governing bodies of the parties.

In practice, commentators have noted that the statutory organization of the central committees is so cumbersome as to make only titular leadership realistically possible.[11] *See California Politics, supra* at 190-91. For example, the Democratic state central committee is composed of over 1,000 members — more than five times the size of the State Convention. *Id.* at 191. The membership in-

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[10] See Friedman, *supra* at 69 ("[i]n statutory contemplation California party organs have been left with one major role—to campaign for the general election success of the party nominees selected by the voters at the primary"); *see also* 23 Ops. Cal. Atty. Gen. 119, 121-23 (1954).

[11] The separate Elections Code provisions prescribing the membership of the Republican, American Independent, and Peace and Freedom central committees differ in some respects from the Democratic Party provisions. *See, e.g.*, Cal. Elec. Code §§ 9000-9510 (Republican Party). For instance, Elections Code § 8774 requires that the chairperson of the Democratic Party state central committee serve a single term to be fixed by party by-laws and that the chair alternate between residents of northern and southern California. Section 9274 duplicates the north-south rotation requirement of section 8774 but specifies a fixed term of two years for the Republican Party chair.

cludes all Democratic officeholders from Governor to members of the Congress and the state legislature. Cal. Elec. Code § 8660(a). Each state-wide officeholder,[12] United States Senator and state senator, appoints three other state committee members, "at least two of whom shall be of the opposite sex"; and each member of Congress and the State Assembly appoints two other members, "at least one of whom shall be of the opposite sex." *Id.* § 8663. Defeated party nominees for these offices also serve on the committee and appoint their share of additional members. *Id.* § 8661. Rounding out the membership are members elected by the county committees on a basis proportionate to registered party strength in each county, *id.* §§ 8660(b), 8667; five members elected by a caucus convened in each assembly district, *id.* § 8660(g) & 8669; and miscellaneous others.[13]

Thus, the legislative design favors elected officials over party members who do not hold elective office. The design particularly favors incumbent state legislators, who enact and amend the legislation. Members of the California State Assembly and Senate can control as many as 400 positions; in comparison, the California dele-

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12 The state-wide officeholders are the Governor, the Lieutenant Governor, the Treasurer, the Controller, the Attorney General, the Secretary of State, and members of the State Board of Equalization. Cal. Elec. Code § 8660(a)(1)-(7).

13 The miscellaneous state committee members include the following: (1) the national committeemen and national committeewomen of the party; (2) such immediate past party officers as are provided by party by-laws; (3) the President of the California Democratic Council and the President of the Federation of Young Democrats; and (4) former elected, nonjudicial officeholders. Cal. Elec. Code § 8660 *passim*.

gation to the United States Congress and Senate controls only 143 positions. *See* Cal. Elec. Code § 8660.

Finally, all party central committees have been prohibited from endorsing or opposing candidates in party primaries. Commentators have claimed that, like the cumbersome provisions dictating party governance, the ban on preprimary endorsements has weakened political parties, especially their ability to recruit and elect candidates who will further the party's goals.[14] *See* Friedman, *supra* at 70; *California Politics, supra* at 4; *see also* 23 Ops. Cal. Atty. Gen. 119, 122 (1954). Plaintiffs' uncontroverted affidavits show that by excluding the committes from the process of choosing party nominees, "a basic function of a political party [in our system]," *Kusper v. Pontikes*, 414 U.S. 51, 58 (1973), the state has effectively drained party central committees of political power. Although the legislature has charged the committees with the responsibility of running the general election campaigns of party nominees, in reality nominees run their own campaigns through ad hoc campaign committees. Supplemental Declaration of Austin Ranney; *see also California Politics, supra* at 199-200. Indeed, the California Attorney General has opined that the ban on preprimary endorsements reflects the progressives' "intent to minimize the

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14 Partisan politics in California has been further inhibited by other provisions of the Elections Code. California has adopted non-partisan municipal elections, the initiative and referendum, and at one time allowed cross-filing, which permitted candidates with declared allegiance to one party to run simultaneously for the nomination of another party. Each of these Progressive-era innovations has curbed the ability of the party organization to shape the party's political agenda and support sympathetic candidates. *See California Politics* at 4 & 294-95; *cf.* Ranney, *Curing the Mischief of Faction*, *supra* at 17-19.

role of the established party agencies." 23 Ops. Cal. Atty. Gen. at 122. Overall, it has been observed that California's regulation of political parties has pushed them "out of much of their original domain." Friedman, *supra* at 69.

II

At the outset, we consider various threshold issues raised by the Secretary in her motion to dismiss below and renewed on appeal. The Secretary presents four reasons for reversing the district court without reaching the merits: (1) plaintiffs' complaint fails to raise a justiciable controversy; (2) plaintiffs lack standing to bring the action; (3) the action is barred by the Eleventh Amendment; and (4) the district court should have abstained under the *Pullman* doctrine from adjudicating the first and third causes of action. We find none of these arguments persuasive.

A

Article III limits the exercise of federal judicial power to actual cases and controversies. *NAACP v. City of Richmond*, 743 F.2d 1346, 1350 (9th Cir. 1984). A plaintiff who challenges a statute must demonstrate "a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." *Babbitt v. United Farm Workers National Union*, 442 U.S. 289, 298 (1979); *see also O'Shea v. Littleton*, 414 U.S. 488, 494 (1974). But "[o]ne does not have to await the consummation of the threatened injury [to seek relief]. If the injury is certainly impending that is enough." *Babbitt*, 442 U.S. at 298 (quoting *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923)). When a plaintiff seeks to engage in conduct pro-

scribed by statute and a credible threat of prosecution exists, he need not "expose himself to actual arrest and prosecution to be entitled to challenge [the] statute . . . ." *Id.* (quoting *Steffel v. Thompson*, 415 U.S. 452, 459 (1974)); *see also Doe v. Bolton*, 410 U.S. 179, 188 (1973). This is especially true in a First Amendment case because of "the sensitive nature of constitutionally protected expression." *Dombrowski v. Pfister*, 380 U.S. 479, 486 (1965).

Relying on *Poe v. Ullman*, 367 U.S. 497 (1961), the Secretary claims that the action is not justiciable because the Elections Code provisions that plaintiffs challenge have never been enforced. In *Poe*, the Supreme Court held that a constitutional challenge to a Connecticut ban on contraceptives was not justiciable because the ban had never been enforced during its seventy-five year history, *id.* at 501, even though "contraceptives [were] commonly and notoriously sold in Connecticut drug stores." *Id.* at 502. This case, however, is distinguishable from *Poe* in that here we have no record that the relevant provisions have been "commonly and notoriously" violated. Indeed plaintiffs uncontroverted affidavits show that they have consistently, if reluctantly, obeyed the statutes in conducting party affairs.

Rather than *Poe*, we believe resolution of the justiciability issue is controlled by *Babbitt*, 442 U.S. at 302-03, and *Epperson v. Arkansas*, 393 U.S. 97, 101-02 (1968). In both cases, the Court found justiciability notwithstanding a record of non-enforcement because, as distinguished from

Poe, the record did not show that the statutes had been "commonly and notoriously" violated.[15]

The Secretary further contends that, under *Pennhurst State School and Hospital v. Halderman,* 465 U.S. 89 (1984), federal courts lack the authority to determine that a violation of a challenged state statute is a criminal offense unless the statute has already been enforced through a criminal prosecution.[16] She asserts that because federal courts cannot "instruct[] state officials on how to conform their conduct to state law," *id.* at 106, they are necessarily disabled from finding that a state statute requires criminal prosecution. We cannot accept this reading of *Pennhurst.* There the Supreme Court merely held that federal courts had no jurisdiction over an action to

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[15] The Secretary argues without authority that no case or controversy is raised by a challenge to an unenforced criminal statute unless that statute was recently enacted. The Secretary's argument is refuted by *Epperson,* where the Court held the statute justiciable despite its unenforced presence on the books for forty years. *See* 393 U.S. at 109 (Black, J., concurring). Indeed, the aftermath of *Poe* teaches that federal courts should not lightly determine that a statute has fallen into desuetude. The very statute the Court characterized as a dead letter in *Poe* was struck down in *Griswold v. Connecticut,* 381 U.S. 479 (1965), after the state prosecuted two persons, including a doctor, for openly counseling married persons on the use of contraceptives. We note that the Supreme Court did not cite *Poe* in either *Babbitt* or *Epperson.*

[16] Although the Secretary does not assert in her briefs that violations of these statutes are not criminal offenses, she notes in passing that the state's Chief Deputy Secretary of State and Chief Deputy Attorney General in their declarations take that position. We agree with Judge Patel that, in light of the plain statutory language of Cal. Elec. Code §§ 29102 & 29430, the state officials' apparent disavowal of any intention to enforce these laws is "anomalous." *San Francisco County Democratic Central Committee v. Eu,* No. C-83-5599, at 6 (Order filed May 3, 1984).

compel state officials to adhere to state law. *Pennhurst* does not undermine either explicitly or implicitly the settled rule that when a plaintiff is "one against whom the[] criminal statutes directly operate . . . a sufficiently direct threat of personal detriment" is alleged. *Bolton,* 410 U.S. at 188.

B

Closely related to the case or controversy requirement is the requirement that plaintiffs have standing to bring the action. *See Simon v. Eastern Kentucky Welfare Rights Organization,* 426 U.S. 26, 38 (1976). The Secretary argues that plaintiffs lack standing because they would not obtain effective relief from a judicial declaration that the statutes were unconstitutional. The premise of the Secretary's standing argument is that the party central committees have voluntarily adopted the statutory restrictions on preprimary endorsements and internal governance. Under these circumstances, she concludes, plaintiffs have no standing to seek an adjudication of the constitutionality of the statutes.

We reject the Secretary's standing argument. She has made no showing that the political parties have voluntarily adopted the statutory restrictions. Indeed, the uncontroverted affidavits of party representatives indicate the contrary: they would reform the composition of their parties' central committees if the statutes were invalidated. Moreover, all committee plaintiffs say they would make preprimary endorsements if the practice were not prohibited.

The Secretary's argument rests on the premise that legislative action can be equated with voluntary action by political parties. She asserts that:

> when the nominees of a party who are actually elected to the Legislature enact legislation affecting the organization and procedures of the party institutions the legislation is an act of self-governance by the party itself. Appellants presented evidence in the district court to support their motion for summary judgment and to oppose appellee's (sic) motion demonstrating that by custom and practice the political parties represented in the legislature accept each other's party legislation. Obviously, the legislators, who are inherently their party, are also exercising the legislative power of the state.

Appellants' Supplemental Brief Pursuant to Court Order Dated August 5, 1985, p. 3 [hereinafter, "Appellants' Supplemental Brief"].

The Secretary's astonishing argument collapses on its own terms. State legislators are not "inherently their party." Nor do legislative enactments that bind the parties and carry criminal penalties represent the parties' own voluntary action. The exercise of the coercive power of the state is the antithesis of voluntary action by political associations. Regardless of the motives of individual legislators or the quid pro quo arrangements that led to passage of the challenged statutes, the result remains the same: state regulation of political parties.

We hold that plaintiffs have standing to bring this action. To hold otherwise would be to allow the state legislature to endow the committees with "the statutory function of party leadership," 23 Ops. Cal. Atty. Gen. 119, 123 (1954), and place this leadership in the effective control of state legislators, *see California Politics* at 191, without fear that their exercise of legislative power will be reviewed under the First Amendment.[17]

C

The Secretary next argues that plaintiffs' action is barred by the Eleventh Amendment. It is settled law, however, that the Eleventh Amendment does not bar an action seeking prospective relief from enforcement of an unconstitutional statute. *Ex parte Young*, 209 U.S. 123 (1908). Because plaintiffs do not seek damages, but only declaratory and injunctive relief, *Ex parte Young* is directly controlling. *See also Edelman v. Jordan*, 415 U.S. 651, 664 (1974).

D

Finally, relying on *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), the Secretary contends that the district court should have abstained from adjudicating plaintiffs' first and third counts pending the resolution of litigation in state court raising similar challenges to the Elections Code. In *Pullman*, the Supreme Court held that abstention may be appropriate "when difficult and unsettled questions of state law must be resolved be-

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[17] The Secretary also relies on *Marchioro v. Chaney*, 442 U.S. 191 (1979). In *Marchioro*, the plaintiffs contended that the policymaking body of a political party enjoys an absolute First Amendment exemption from state regulation. The Supreme Court rejected the claim without reaching the First Amendment issue by pointing out that state law did not require the central committee to perform any policymaking functions; those functions had been freely delegated to the central committee by the party itself. *Id.* at 198 & n.13; *see also* Weisburd, *Candidate-Making and the Constitution*, *supra* at 270 n.336. In this case, by contrast, state law compels ballot-qualified parties to adopt the statutory restrictions.

fore a substantial federal constitutional question can be decided." *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 236 (1984). *Pullman* abstention is inappropriate, however, "when a state statute is not 'fairly subject to an interpretation which will render unnecessary' adjudication of the federal constitutional question." *Id* (citation omitted); *see also Canton v. Spokane School District No. 81*, 498 F.2d 840, 845 (9th Cir. 1974).

Here, the Secretary does not advance an interpretation of the Elections Code that would moot the constitutional questions raised by plaintiffs. Nor could she. Section 11702 is clear on its face that central committees may not make preprimary endorsements, and other provisions prescribe in minute detail committee membership and limit the terms of committee chairs. Thus the district court's refusal to invoke *Pullman* abstention was not an abuse of discretion.[18] *See C-Y Development Co. v. City of Redlands*, 703 F.2d 375, 377 (9th Cir. 1983).

III

Before considering plaintiffs' claims that the Elections Code unjustifiably burdens their First Amendment rights, we address the Secretary's contention that the state and county central committees of California's ballot-qualified political parties have no First Amendment rights because

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[18] This court has a "virtually unflagging obligation" to exercise jurisdiction and may abstain only in exceptional circumstances. *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976). This unflagging "'obligation is particularly weighty when those seeking a hearing in federal court are asserting . . . their right to relief under 42 U.S.C. § 1983.'" *Miofsky v. Superior Court of California*, 703 F.2d 332, 338 (9th Cir. 1983) (quoting *Tovar v. Billmeyer*, 609 F.2d 1291, 1293 (9th Cir. 1980)).

they are public entities, not private associations. The Secretary asserts that the legislature transformed the committees from voluntary political associations into public entities "integral [to] the state's election system," Appellants' Supplemental Brief, p. 15, when it dictated the committees' organization and powers and charged them with the responsibility of conducting the general election campaigns of party nominees. *Id.*, p. 13.

In essence, the Secretary argues that by regulating the committees, the legislature may deprive them of First Amendment rights. The Secretary's argument is flawed by "bootstrap reasoning." *Abrams v. Reno*, 452 F. Supp. 1166, 1170 (S.D.Fla. 1978) ("[w]ithout begging the question of the right of a political executive committee to exist and function without the breath of life provided by the election code, it seems to be bootstrap reasoning to suggest that election code regulation permits the denial of substantial constitutional rights"), *aff'd*, 649 F.2d 342 (5th Cir. 1981), *cert. denied*, 455 U.S. 1016 (1982). Even if the California Elections Code had expressly characterized the committees as public agencies,[19] we would reject the Secretary's premise that a state can strip a voluntary political

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[19] The status of these committees under the Elections Code is less clear than the Secretary would have us believe. The Secretary contends that under *Katz v. Fitzgerald*, 152 Cal. 433 (1907), "political parties shall be . . . regarded as public bodies whose methods are to be controlled by the state." *Id.* at 435. While the state's characterization of state political parties does not bind this court's determination of plaintiffs' First Amendment status, we note that the Secretary's characterization of the committees as public entities is belied by the refusal of both the California Supreme Court and the California Attorney General so to characterize them. *See Unger II*, 37 Cal. 3d at 615 (committees "are not agencies of the state for all purposes"); 59 Ops. Cal. Atty. Gen. 60, 61 (1976) (committees "are not public agen-

(Continued on following page)

association of First Amendment rights by legislating it into an arm of the state. In *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530 (1980), for instance, the Supreme Court held that extensive regulation, however beneficial to the public, cannot deprive a utility of its status as a private entity entitled to constitutional rights. *Id.* at 533-34 & n.1. Likewise, in *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), the Court repudiated the notion that the status of corporations as "creatures of the state" permits the state to prohibit corporate speech. *Id.* at 778 n.14. It follows *a fortiori* that the state cannot abridge the First Amendment rights of political associations by arguing that regulatory legislation makes them "creatures of the state."[20]

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cies"); 23 Ops. Cal. Atty. Gen. 119, 120 (1954) (committees "are no more public agencies than were their counterparts in the pre-primary era"). Moreover, the contention that the committees are state agencies is somewhat incongruous because unlike the sovereign, party central committees are expected to serve party interests, not the interests of the public at large; specifically, they are charged by statute with the responsibility of running the general election campaigns of party nominees. *See, e.g.*, Cal. Elec. Code §§ 8776 & 8940.

[20] The so-called "white primary" cases are not to the contrary. While the Secretary cites *Smith v. Allwright*, 321 U.S. 649, 664-65 (1944), for the proposition that political parties are "public bodies" because they are part of the state's machinery for choosing officials, that case held only that a state party's disenfranchisement of black party members in its primary election amounted to state action for purposes of the Fifteenth Amendment. In later cases, the Court has limited *Smith* to its unusual context: a state-mandated racially discriminatory primary scheme in a one-party state where nomination is tantamount to election. In both *Cousins v. Wigoda*, 419 U.S. 477 (1975), and *Democratic Party v. Wisconsin ex rel. La Follette*, 450 U.S. 107 (1981), the Court "appears to reject the argument that an activity is state action solely because it is integral to a state-created election process." Weisburd, *Candidate-Making and the Constitution*, *supra* at 239 (1984).

We recognize that California has extensively regulated political parties. The Secretary, however, turns constitutional analysis upside down when she argues that the state regulations are immune from constitutional attack because they deprive the party committees of First Amendment status. The question is not whether the committees lack First Amendment rights because of state regulation. Rather, the question is whether the challenged regulations must fall because they violate the committees' First Amendment rights. Turning to this question, we address the constitutionality of the provisions that regulate the structure and internal affairs of the party committees in Part III. In Part IV, we consider the constitutionality of the ban on preprimary endorsements.

IV

Our analysis of plaintiffs' constitutional claims begins with the fundamental premise that "a significant impairment of First Amendment rights must survive exacting scrutiny." *Elrod v. Burns*, 427 U.S. 347, 362 (1976) (plurality); *see also Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 294 (1981). If, as plaintiffs allege, the state regulations interfere with their rights to free association and free expression, the regulations can survive First Amendment scrutiny only if the Secretary shows that they are "necessary to serve a compelling interest." *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979); *see also Kusper v. Pontikes*, 414 U.S. 51, 58-59 (1973) ("even when pursuing a legitimate interest,

a State may not choose means that unnecessarily restrict constitutionally protected liberty"). [21]

We first consider whether the state's regulation of the selection of state committee members and the term of office of committee chairs burdens plaintiffs' First Amendment rights. We then consider whether the regulations serve compelling state interests. *See Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).

A

"[T]he right of individuals to associate for the advancement of political beliefs" is fundamental, *Williams v. Rhodes*, 393 U.S. 23, 30 (1968), and includes the "freedom to identify the people who constitute the association, and to limit the association to those people only." *Wisconsin ex rel. La Follette*, 450 U.S. at 122. Because the right of

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[21] The Supreme Court has developed the following detailed methodology for deciding whether laws that impinge on associational freedoms violate the First Amendment:

> [A court] must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional. *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *see also Socialist Workers Party v. Secretary of State*, 765 F.2d 1417, 1418 (9th Cir. 1985). We do not construe *Anderson* as disturbing the settled rule that laws that restrict First Amendment freedoms must "be demonstrably supported by not only a legitimate state interest, but a compelling one." *Brown v. Hartlage*, 456 U.S. 45, 53-54 (1982).

association would be hollow without a corollary right of self-governance, "there must be a right not only to form political associations but to organize and direct them in the way that will make them most effective." *Ripon Society Inc. v. National Republican Party*, 525 F.2d 567, 585 (D.C. Cir. 1975), *cert. denied*, 424 U.S. 933 (1976). Thus the party's freedom of association necessarily includes the right "to choose its own structure, select its own standard bearers, and formulate its own platform—all free from the intrusion of state regulation." *Republican Party v. Tashjian*, 770 F.2d 265, 281 (2d Cir. 1985); *see also Ripon Society Inc.*, 525 F.2d at 585 ("a party's choice, as among various ways of governing itself, of the one which seems best calculated to strengthen the party and advance its interests, deserves the *protection* of the Constitution. . . .") (emphasis in original).

It is readily apparent that the regulations burden the parties' right to govern themselves as they think best. By legislative fiat, the state vests party leadership in the central committees, determines the size of the committees, and apportions their membership according to a statutory formula. Whether this formula is or is not "best calculated to strengthen the party and advance its interests," *Ripon Society Inc.*, 525 F.2d at 585, is irrelevant to First Amendment analysis. It is the right of the party, not the state, to decide how the party shall be governed. *See id.*

In stacking the deck heavily in favor of elected officials and party nominees, the legislature has dictated to each ballot-qualified party an organizational structure that may not be the party's choice. For example, a party trying to adapt to changing conditions may have interests that differ from the interests of entrenched incumbents. Commentators

have noted that the pro-incumbent composition and unwieldy size of California's state central committees have made them "fairly rigid organization[s] incapable of adjusting and responding to changing conditions." *California Politics, supra* at 186.

The experience of the Libertarian party exemplifies the plight of a political party forced to operate under state-mandated rules of governance. When the Libertarian party qualified for the ballot, it was forced to jettison its "preferred and natural" party organization and replace it with one already mandated for one of the existing qualified parties.[22] *See* Declaration of Mary Gingell. After adopting the rules of the Peace and Freedom Party as the least objectionable interim model, the Libertarians drafted a body of rules specifically tailored to their party's distinctive needs. When presented to the legislature, the proposed rules languished and died in committee. *See id.* Thus, the Libertarian party has been compelled by the state to organize itself in a way considered inimical to its political interests. *Cf. Tashjian*, 770 F.2d at 283 & n.25.

Moreover, we believe that the challenged regulations directly interfere with the parties' free expression of inevitably coloring the message that the parties communicate to the electorate. *See Tashjian*, 770 F.2d at 282 ("in light of the intimate relationship between the structure of a political association and the message ultimately transmitted by that group, . . . the inexorable effect of [regulating the

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[22] Parties that newly qualify for the ballot by demonstrating adequate electoral strength under Cal. Elec. Code § 6430 are required to conform their operations to the statutory blueprint prescribed for one of the existing ballot-qualified parties. *Id.* § 9995. The Libertarian party qualified in 1980. Declaration of Mary Gingell.

structure of political parties] is to alter the Party's message"). By favoring incumbents, the California legislature may give ballot-qualified parties a pro-incumbent image that impedes their associational goals.[23] For instance, a party's efforts to change political course may be frustrated by the incumbent bias inherent in its organizational structure. We do not intend to say that elected officials and party nominees are incapable of providing strong and effective leadership. What we do intend to say is that when the state restricts a party's freedom to choose its leadership, the state burdens the party's First Amendment rights.

The parties' associational right to choose their own leadership is also burdened by the single-term limit on committee chairs. In limiting committee chairpersons to one two-year term—regardless of their popularity and effectiveness—the legislature has impaired the parties' ability to commit their fortunes to experienced and successful leadership. As Judge Patel recognized below, parties are "gravely weakened if the members are not permitted to make use of an able leader for a long enough period of time to ensure effective administration." *San Francisco County Central Committee v. Eu*, No. C-83-5599 at 20 (Order filed May 3, 1984).

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[23] Commentators have noted that mandatory organizational provisions damage a party's freedom to determine its own message. *See* Weisburd, *Candidate-Making and the Constitution, supra* at 260-61 ("requiring a particular form of party organization can prevent party adherents from attaining objectives inconsistent with that required form of organization"); *cf.* Note, *Primary Elections and the Collective Right of Freedom of Association*, 94 Yale L. J. 117, 126 (1984) ("a political party's ability to define its boundaries cannot be separated from the party's ability to determine its political ideology").

B

Having established that the challenged regulations burden plaintiffs' First Amendment rights, we turn to "the precise interests put forward by the State as justifications for the burden imposed by its rule." *Anderson*, 460 U.S. at 789.

The Secretary claims that the state has a compelling interest in sheltering the state central committees from the internecine strife of the primary elections so that the committees will be in a strong position to carry out their statutory responsibility of running the general election campaigns of party nominees. This interest in avoiding factionalism, the argument goes, justifies state interference with the associational rights of political parties and their adherents. The Secretary argues that vesting control of the state committees in elected officials and party nominees assures that the committees will be broadly representative and resistant to factionalism.

The Secretary also cites the state's professed interest in restraining factions as justification for limiting the terms of party chairs. She argues that when the term limitation is combined with the statutory requirement that chairs rotate between northern and southern California, friction between these distinct regional interests is minimized.

In sum, the Secretary maintains that the Election Code provisions regulating the membership of state central committees and limiting the terms of committee chairs serve the state's assertedly compelling interest in avoiding "splintered parties and unrestrained factionalism." *Storer v. Brown*, 415 U.S. 724, 736 (1974).

Even if the Secretary could demonstrate that the state's regulation of ballot-qualified parties served its asserted interest in minimizing party faction, we disagree that promoting harmony in political parties is a compelling state interest. We recognize that the state's responsibility to hold elections and certify the results gives rise to a legitimate state interest in regulating elections. Without question, the state may act to protect "the integrity of the electoral process." *Rosario v. Rockefeller*, 410 U.S. 752, 761 (1973). As the Supreme Court said in *Storer*, "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." 415 U.S. at 730.

Because of its compelling interest in orderly elections, the state may restrict access to the ballot. *See Bullock v. Carter*, 405 U.S. 134, 145 (1972) (the state "has a legitimate interest in regulating the number of candidates on the ballot"). Toward this end, the state may require that candidates meet minimum standards to qualify for the ballot in order to keep "its ballots within manageable, understandable limits," *Lubin v. Panish*, 415 U.S. 709, 715 (1974), "avoid voter confusion, and assure that the winner is the choice of a majority . . . of those voting, without the expense and burden of runoff elections." *Bullock*, 405 U.S. at 145. For example, independent candidates may be required to present nominating petitions that demonstrate "a significant modicum of [electoral] support." *Jenness v. Fortson*, 403 U.S. 431, 442 (1971); *see also American Party of Texas v. White*, 415 U.S. 767, 782 (1974). The state may also require the payment of filing-fees to weed out spurious candidacies, *see Bullock*, 405 U.S. at 145, so long as the fees are not excessive or a bar to indigent candidates. *Lubin v. Panish*, 415 U.S. at 717-18. Further, the state may protect the integrity of its primary elections

by imposing a waiting period before voters can switch their registered party affiliation, *Rosario v. Rockefeller*, 410 U.S. 752 (1973), and before candidates registered with one party can renounce their affiliation to run as independent candidates. *Storer v. Brown*, 415 U.S. 724 (1974).

It is equally clear, however, that the state's interest in "the stability of its political system", *Storer*, 415 U.S. at 736, does not extend to regulations that effectively restrict the ballot to the major parties or that ensure that the major parties remain ballot-qualified. *Williams*, 393 U.S. at 32; *see also Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 185-86 (1979). As the Supreme Court noted in a related context, "care must be taken not to confuse the interest of partisan organizations with governmental interests." *Elrod*, 427 U.S. at 362. Thus, although the state's interest in orderly elections allows it to impose reasonable, non-discriminatory restrictions on ballot access, the state may not go to bat for political parties to assure that they remain ballot-qualified. In other words, the state has no interest in regulating political parties for the purpose of helping them win or retain voter support. Political parties are nothing more than voluntary associations of individuals who band together in pursuit of shared political goals. A party's survival depends upon its ability to compete in the free marketplace of political ideas and ideals. The First Amendment limits the state to a neutral role in that competitive process. The state may not interfere with the associational rights of political parties beyond what is necessary to assure honest and orderly elections.

The Secretary relies upon *Storer v. Brown* as support for her argument that the state may prescribe the composi-

tion of state central committees and limit the term of party chairs because of the state's asserted interest in assuring strong consensus leadership for the general election campaigns. We believe her reliance on *Storer* is misplaced.

In *Storer*, the Court upheld a California "sore loser" statute that required independent candidates for political office to disaffiliate from their former political party at least one year prior to the party primary. *Storer* recognizes that the state's legitimate interest in limiting access to the general election ballot entitles it to reserve that ballot for "major struggles," free of the destabilizing effect of "continuing intraparty feuds." *Storer*, 415 U.S. at 735; *see also American Party of Texas*, 415 U.S. at 781 (the state "may insist that intraparty competition be settled before the general election . . . ."). But critical to the *Storer* holding was that California's disaffiliation provision did not attempt to control intraparty feuding during the primary campaigns. To the contrary, the primary was recognized as the forum in which "contending forces within the party finally settle their differences." *Storer*, 415 U.S. at 735; *see also Anderson*, 460 U.S. at 803 (the *Storer* Court did not "suggest that a political party could invoke the powers of the State to assure monolithic control over its own members and supporters."). *Storer* does not stand for the proposition that the state has a compelling interest in perpetuating strong ballot-qualified parties. Nor does *Storer* authorize states to regulate political parties in an effort to keep them strong and conflict-free. In sum, the state has no legitimate interest in promoting the general-

ized goal of "compromise and political stability." *Williams*, 393 U.S. at 32.[24]

When we apply these principles to the California Elections Code, it becomes evident that the state's asserted interest in fostering party leadership does not derive from the state's legitimate interest in orderly elections. Weak and divided campaign leadership may result in defeat at the polls, but it does not threaten the state's interest in an orderly election process. The Secretary's argument confuses campaigns with elections, partisan interests with the interests of the state. We conclude, therefore, that regulations designed to give ballot-qualified parties effective campaign leadership do not rest on a compelling state interest.

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[24] Likewise, the Secretary's use of *Marchioro v. Chaney*, 442 U.S. 191 (1979), to support the challenged governance provisions outstrips the limited rationale of that case. In *Marchioro*, the State of Washington attempted to require that the state central committee be composed in a representative fashion. The authorizing statute empowered the central committee to perform certain limited duties, such as calling party conventions and filling vacancies on the party ticket. In addition, the charter of the Democratic Party delegated to the committee considerable responsibility in raising funds, recruiting candidates, and setting general policy. The plaintiffs, would-be committee members who were elected pursuant to a charter amendment that sought to supplement the membership stipulated by state law, sued to enjoin their exclusion based on the statute on the ground that a party policymaking body enjoyed a First Amendment exemption from state regulation. The Supreme Court dismissed the plaintiffs' claim without resolving the constitutionality of the Washington regulations. The Court noted that the party freely delegated the committee powers upon which the plaintiffs predicated their challenge; and plaintiffs did not oppose the committee's performance of its state-imposed duties. *Id.* at 197-98. Thus, the Court held that the source of the plaintiffs' grievance was the party's exercise of its right of self-governance, not state interferences with that right. *Id.* at 199.

C

Moreover, even if we assume that the state has a compelling interest in minimizing party faction, the Secretary has failed to carry her burden of showing "a substantially relevant correlation between the governmental interest asserted," *Pacific Gas & Electric Co. v. Public Utilities Commission of California*, 106 S.Ct. 903, 913 (1986), and the Elections Code sections regulating the selection of state committee members and the term of office of their chairs. We agree with Judge Patel that the Secretary failed to submit "a shred of evidence", *San Francisco County Central Committee v. Eu*, at 22, in support of her claim that unregulated parties would be more vulnerable to "the predations of faction." Defendant-Appellants' Supplemental Brief, p. 44. In opposing plaintiffs' summary judgment motion on the merits, the Secretary relied exclusively on the affidavit of retired Democratic state senator Albert S. Rodda, Jr., a long-time member of the Democratic state central committee. As Judge Patel observed, this affidavit consists of "opinions . . . not based on facts, but on speculations." *San Francisco County Central Committee v. Eu*, at 16. With respect to the provisions that regulate committee governance, Rodda makes the single conclusory statement that they "provide some protection against devices used by factions to exclude others from participation in party affairs." Affidavit of Albert S. Rodda, Jr.

The Rodda affidavit fails to controvert plaintiffs' declarations concerning the impact that the challenged Elections Code provisions have on political parties. Plaintiffs' declarations demonstrate that these provisions weaken rather than strengthen the leadership of ballot-qualified

parties. For example, the provisions regulating state committee membership stifle party debate by overrepresenting elected officials. Declarations of David E. Sturrock and Bert Coffey. Plaintiffs have also shown the difficulty of effecting a change in party leadership because party initiatives are left to the mercy of a slow-moving, possibly recalcitrant legislature. Declaration of Hugh Bone.

Finally, plaintiffs' declarations show that the state's extensive regulation of party leadership discourages able people from taking an active role in party organization and hinders a party's recruitment of new leaders. Declarations of Bert Coffey and Austin Ranney. Although the Secretary claims that the challenged regulations invigorate and democratize the parties, as the Progressives ostensibly set out to do, *see supra* at 7-8, the record demonstrates the opposite: in fact, the parties have become weak and fossilized. Thus, we conclude that the Secretary has failed to demonstrate that the state's regulations advance its professed interest in strong party leadership.[25]

V

Finally, we consider the constitutionality of California's outright ban on partisan preprimary endorse-

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[25] We find it ironic that the Secretary claims that the Progressives' reform of political parties strengthened party leadership when the Attorney General of California once rendered a formal opinion that the reforms reflect the Progressives' intent "to minimize the role of the established party agencies." 23 Ops. Cal. Atty. Gen. at 122.

ments, Cal. Elec. Code § 11702.[26] Because section 11702 prohibits political speech, the inviolability of which rests at the core of the First Amendment, *see, e.g., Buckley v. Valeo*, 424 U.S. 1, 14 (1976); *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971), we must subject the section to strict scrutiny. "[W]here . . . a prohibition is directed at speech itself, and the speech is intimately related to the process of governing, 'the State may prevail only upon showing a subordinating interest which is compelling.'" *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 786 (1978) (quoting *Bates v. Little Rock*, 361 U.S. 516, 524 (1960)). Moreover, " 'the burden is on the government to show the existence of such an interest.' " *Bellotti*, 435 U.S. at 786 (quoting *Elrod*, 427 U.S. at 362). Finally, "the state action may be sustained only if the government can show that the regulation is a precisely drawn means of serving" its interests. *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530, 540 (1980).

The Secretary argues that the ban on preprimary endorsements serves three state interests that she claims to be compelling: (1) avoiding party factionalism; (2) protecting voters from the undue influence of party leaders; and (3) minimizing voter confusion. We will address each interest in turn.

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[26] Until recently, Florida was the only state other than California that forbade partisan preprimary endorsements. See Weisburd, *Candidate-Making and the Constitution*, *supra* at 271 n.343. The Florida statute was held to violate the First Amendment in *Adams v. Reno*, 452 F. Supp. 1166, 1170 (S.D.Fla. 1978), *aff'd* 649 F.2d 342 (5th Cir. 1981), *cert. denied*, 455 U.S. 1016 (1982).

A

The Secretary asserts that the ban on preprimary endorsements serves the state's interest in averting internal party dissension and factionalism. As we discussed above, the state's interest in regulating political parties derives from its role in conducting the primary and general elections and certifying election results. We held that the state has no interest in assuring that ballot-qualified parties remain strong and vigorous. We now hold similarly that the state's asserted interest in preserving party cohesion during primary election campaigns is not a compelling interest that could justify a prohibition on preprimary endorsements. Moreover, even if preserving party cohesion during primary campaigns were a compelling state interest, the Secretary has made no showing that banning preprimary endorsements sufficiently serves that interest to justify an outright prohibition on political speech.[27]

The Secretary again cites *Storer v. Brown*, 415 U.S. 724 (1974), for the proposition that the state has a compelling interest in preventing party committees from disintegrating into hostile factions during the primaries, thereby disabling them from running the general election campaigns of party nominees. According to the Secretary, section 11702 advances this interest by disembroiling the committees from the primary contest. Thus, the argu-

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[27] Thus, in our view, the only conceivable basis for justifying the ban on preprimary endorsements would be that the central committees possess no First Amendment rights because they are public entities. We have already rejected the Secretary's argument to that effect. See Part III, *supra*.

ment goes, opportunistic primary candidates have no reason to seize control of the party leadership. Likewise, the leadership's enforced neutrality among primary rivals encourages the preservation of party resources for the eventual party nominee.

The Secretary's reliance on *Storer* is misplaced. *Storer* recognized that the state's interest in limiting access to the general election ballot entitles it to prevent "sore losers" from running again as independent candidates. 415 U.S. at 734. Moreover, *Storer* viewed the primary as set apart for healthy intraparty confrontation, even bloodletting. *Id.* at 735. It offers no support for the Secretary's claim that the state has a compelling interest in fostering party cohesiveness during primaries.

Even if we assume that the state has such an interest, the Secretary made no showing that the ban on preprimary endorsements preserves party cohesion. Again, the only affidavit she submitted was the declaration of former state senator Rodda, and this affidavit consists of unsupported conjecture.

Plaintiffs' uncontroverted affidavits, on the other hand, bear out the following: First, section 11702 has eroded the parties' ability to identify, recruit, and promote "strong opposition candidates." Declaration of David E. Sturrock. In the void caused by silencing the committees' power of endorsement, each candidate forms an ad hoc committee to run his primary campaign and, if he is successful, that committee goes on to run the general election campaign independently of the party organization. The result of banning preprimary endorsements, according to the affidavit of Williams College political scientist

James MacGregor Burns, is that party control degenerates into a "personalistic system that caters to irresponsible political campaigning and public service." Thus, as Burns concludes, "taking away the endorsement power strikes at the very core of the party." *See also* Declaration of Eugene Lee ("[a] political party unable to endorse candidates is, by definition, a weak party"); *California Politics, supra* at 5 ("[C]alifornia campaigns are highly personalized extravaganzas').

Second, plaintiffs showed that in states that permit partisan primary endorsements, the practice is generally used in a selective, circumspect fashion so as not to endanger party unity. Several affiants experienced in the politics of other states testified that when no candidate has been the clear favorite of the party leadership, the leadership has either refrained from issuing controversial endorsements or endorsed several candidates in the same race. *See, e.g.* Declarations of Eugene Lee and James MacGregor Burns. Moreover, the ability to issue endorsements has helped party leadership distinguish candidates genuinely allied with the party from candidates who are essentially masquerading as party adherents. In California, conversely, the ban on preprimary endorsements has on occasion allowed hostile candidates to win the party nomination. For instance, in a much-publicized episode discussed in plaintiffs' affidavits, a grand dragon of the Klu Klux Klan campaigned for and won the 1980 Democratic party nomination for Congress in the San Diego area while the Democratic county central committee remained powerless to oppose him. Declaration of Edmond Constantini.

In sum, the Secretary has failed to show that section 11702 serves party cohesion. Thus, even if we considered party cohesion to be a compelling state interest, we would conclude that the Secretary has failed to show that the interest is furthered by banning preprimary endorsements.

B

The Secretary further claims that the ban on preprimary endorsements is justified by the state's interest in safeguarding the right of party adherents to choose primary candidates without undue influence from the party leadership. The Secretary thus attempts to justify the restraint on committee speech by arguing that the ban promotes the First Amendment rights of party rank and file. We must reject the argument that one person's First Amendment rights may be restricted in order to enhance the rights of another.

It is by now settled First Amendment law that the state may not "restrict the speech of some elements of our society in order to enhance the relative voice of others." *Buckley*, 424 U.S. at 48-49, *quoted in Bellotti*, 435 U.S. at 790-91; *see also Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). In *Bellotti*, the state argued that curbing corporate speech in referenda elections furthered "the State's interest in sustaining the active role of the individual citizen in the electoral process." *Bellotti*, 435 U.S. at 787. The Supreme Court rejected this argument on the ground that the First Amendment does not tolerate discriminatory silencing measures designed to equalize political debate. Thus, *Bellotti* forecloses the Secretary's argument that the ban on preprimary endorsements is constitutionally acceptable because in the state's judg-

ment it yields an outcome favorable to free speech. *See also Pacific Gas & Electric v. Public Utilities Commission of California*, 106 S. Ct. 903 (1986).

With the exception of cases upholding laws carefully tailored to proscribe fraud and corruption, *see e.g., Buckley*, 424 U.S. at 26-27, the Secretary cites no authority for the proposition that the state can regulate the flow of information between political associations and their members. Prohibiting the governing body of a political party from supporting some candidates and opposing others patently infringes both the right of the party to express itself freely and the right of party members to an unrestricted flow of political information. *See Pacific Gas & Electric*, 106 S. Ct. at 907 ("The First Amendment protects the public's interest in receiving information"); *cf. Brown v. Hartladge*, 456 U.S. 45, 60 (1982) ("[by] *the free exchange of ideas* . . . the people are to choose . . . between candidates for political office") (emphasis added). We cannot accept the Secretary's claim that denying voters access to the views of party leadership somehow enhances their First Amendment rights.

In any case, we would reject "the 'highly paternalistic approach' of statutes like [section 11702] which restrict what the people may hear." *Bellotti*, 435 U.S. at 791 n.31 (quoting *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 770 (1976)). As *Bellotti* teaches, "the people in our democracy are entrusted with the responsibility for . . . evaluating the relative merits of conflicting arguments [and] the source and credibility of the advocate." 435 U.S. at 791-92; *cf. Police Department v. Mosely*, 408 U.S. 92, 95 (1972) ("gov-

ernment has no power to restrict expression because of its message, its ideas, its subject matter, or its content"). Plaintiffs' affidavits confirm what is implicit in the First Amendment: when the people are exposed to a public debate that is "uninhibited, robust, and wide-open," *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964), they are fully capable of thinking for themselves. Party endorsements are unrestricted in all other states, *see supra* at n.26; and plaintiffs' affidavits show that the electorate of these states typically considers the party's imprimatur as simply one relevant datum in the pool of information on rival candidates for the party nomination. Declarations of Donald Fraser, Malcolm Jewell, and Bert Coffey. Thus, the Secretary's fear that party members will blindly rubber-stamp the party's endorsement is speculation not borne out by either experience or common sense. California's ban on preprimary endorsements is a form of paternalism that is inconsistent with the First Amendment.

C

Finally, the Secretary attempts to justify the ban on preprimary endorsements on the ground that it minimizes voter confusion.[28] She asserts that voters might be con-

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[28] Legislative findings preceding § 11702 report "considerable public doubt and confusion" arising from the promulgation of deceptive endorsements. Cal. Elec. Code § 11701(3). The California courts that have enforced § 11702 have stated that minimizing voter confusion was the principal motive behind the enactment. *See People v. Crutcher*, 262 Cal. App. 2d 750, 752-53 (Cal. Ct. App. 1968); *California Democratic Council v. Arnebergh*, 233 Cal. App. 2d 425, 430 (Cal. Ct. App. 1965).

fused if they are not sheltered from the views of party leadership. The Secretary's apparent concern is that voters will be discouraged from participating in the primary election because they will view the party-endorsed candidate as the party's foreordained choice.

Again, we think that the Secretary has given voters too little credit. She has made no showing in support of her charge that voters will be confused by party endorsements. To the contrary, plaintiffs have made a showing that voters understand that endorsements are intended to counsel, not pre-empt their votes, and that the primary victor alone constitutes the general election candidate of the party. Analyzed properly, the asserted state interest in avoiding voter confusion collapses into a professed interest in ensuring that voters do not cast their primary ballots in unthinking obedience to party directives. On this score, we agree with the Second Circuit that "a state certainly does not have a compelling interest in shielding from confusion those voters who engage in unthinking and Pavlovian reliance on party labels." *Tashjian*, 770 F.2d at 284. Moreover, to the extent that the risk of confusion arises because the central committees carry the official imprimatur of the state, state legislation—not the inherent coerciveness of party endorsements—is the root of the problem.

California's asserted interests are insufficient to justify its ban on preprimary endorsements. Accordingly, we hold that section 11702 violates the First Amendment.

The judgment of the district court invalidating the provisions of the California Elections Code that regulate the selection of state central committee members, limit the term of office of committee chairs, and prohibit state and county central committees from endorsing, supporting, or opposing candidates in party primary elections is AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NO. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs,

vs.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

ORDER

(Filed May 3, 1984)

Plaintiffs in this case are several Democratic and Republican county central committees and their chairs or vice-chairs, the state central committee of the Libertarian Party, an elected member of the San Francisco Board of Supervisors, and various individuals and groups active in party politics. Defendants are the Secretary of State and Attorney General of California and the district attorneys of several counties.[1] Plaintiffs in their first cause of action challenge certain provisions of the California Elections Code which prohibit state and county central committees from endorsing, supporting, or opposing candidates in direct party primary elections. In their second cause of action, they challenge provisions of the Elections Code and the California constitution which prohibit the committees from endorsing, supporting, or opposing candidates in county, city, and school elections. Finally, in

the third cause of action, they challenge provisions of the Elections Code which regulate the internal structure and organization of the political parties. Plaintiffs claim that the challenged provisions abridge their rights under the First and Fourteenth Amendments to the United States Constitution, as well as under 42 U.S.C. § 1983, and have moved for summary judgment on their claims. Defendants have moved to dismiss the claims on various grounds.

Oral argument was heard on the motions on April 9, 1984.[2] Having considered all memoranda, declarations, and exhibits submitted by the parties, and having heard oral argument, the court issued a brief order on April 16, 1984 outlining its rulings on the various issues. Due to the pressing nature of many of the issues presented, and in view of the upcoming primary elections, the court did not, in its April 16 order, discuss the basis for its rulings. The reasons for its decision were briefly explained from the bench and are more fully set forth herein.

Defendants' Motions to Dismiss

Defendants have moved to dismiss on four grounds: lack of standing; lack of a case or controversy; an Eleventh Amendment bar; and abstention. Each of these will be discussed separately.

1. *Standing*

Defendants' standing argument is without merit. The fact that in their moving papers they relegated the argument to a footnote and cited no authority suggests they may not consider it a serious argument. Plaintiff central committees are precisely the parties at which the challenged statutes are directed and they allege injury in their

capacity as organizations. It is simply not the law that an organization has no standing to bring an action if the challenged prohibition against its actions as an organization does not operate against its members as individuals. *E.g., Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 296 (1981) ("[t]o place a . . . limit . . . on individuals wishing to band together to advance their views on a ballot measure, while placing none on individuals acting alone, is clearly a restraint on the right of association"); *Buckley v. Valeo*, 424 U.S. 1, 15 (1976) ("[t]he First Amendment protects political association as well as political expression").

There is no authority for defendants' contention that the organizational plaintiffs are not "persons" within the meaning of Cal. Elec. Code §§ 29102 and 29304, and the court declines to adopt such a narrow interpretation. *See, e.g.*, Cal. Elec. Code § 3564.1 (in which "person" is accorded an expansive meaning). Plaintiff committees are also "persons" within the meaning of the Fourteenth Amendment and 42 U.S.C. § 1983, and have standing to bring suit under those provisions. *California Diversified Promotions, Inc. v. Musick*, 505 F.2d 278, 283 (9th Cir. 1974) (corporate plaintiff has standing under Fourteenth Amendment); *Collin v. Smith*, 447 F. Supp. 676, 682 (N.D. Ill. 1978), *aff'd*, 578 F.2d 1197 (7th Cir.), *cert. denied*, 439 U.S. 916 (1978) (political party has standing under Fourteenth Amendment); *Socialist Workers Party v. Hardy*, 480 F. Supp. 941, 942 & n.1 (E.D. La. 1977), *aff'd*, 607 F.2d 704 (5th Cir. 1979) (political party has standing under 42 U.S.C. § 1983).

Finally, defendants' reliance on *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976)

is misplaced. Plaintiffs' interest is not an abstract one. They have clearly shown that the injuries they allege will be redressed if they prevail and obtain a decision invalidating the challenged provisions.

The court concludes that plaintiffs have standing to raise the issues in the complaint before this court.

2. *Eleventh Amendment*

Defendants attempt to argue that the court may not adjudicate the issues in this case because its jurisdiction is barred by the Eleventh Amendment. For this proposition they rely on the Supreme Court's recent opinion in *Pennhurst State School and Hospital v. Halderman*, — U.S. —, 104 S. Ct. 900 (1984). This contention is also without merit. *Pennhurst* involved the authority of a federal court to require a state to comply with its own law. The case before this court is premised on alleged violations of *federal* constitutional law. The Court in *Pennhurst* reaffirmed that the Eleventh Amendment does not bar a suit against a state official which is premised on a violation of federal constitutional rights. 104 S. Ct. at 910. *See, e.g., Steffel v. Thompson*, 415 U.S. 452 (1974) (plaintiff challenged state criminal trespass statute on federal constitutional grounds). The Eleventh Amendment poses no jurisdictional bar to this action.

3. *Case or controversy*

Defendants argue that this case is not justiciable due to lack of a case or controversy, in that the issues are not ripe for adjudication. In support of this argument, defendants have submitted declarations from the Chief Deputy Secretary of State of California, the Chief Deputy At-

torney General of California, and various county district attorneys and employees of those offices. These declarants state that to their knowledge the challenged statutes have never been enforced, and that in their view violation of the statutes would not constitute a criminal offense.

Cal. Elec. Code § 11702 provides:

> The state convention, state central committee, and the county central committee in each county are the official governing bodies of a party qualified to participate in the direct primary election. The state convention, state central committee, and the county central committee in each county shall not endorse, support, or oppose, any candidate for nomination by that party for partisan office in the direct primary election.

Cal. Elec. Code § 29430 provides:

> No candidate for nomination of a political party for a partisan office in the direct primary election shall claim, nor shall any other person claim on his behalf, that he or she is the official candidate or the officially endorsed candidate of such political party. A violation of this section by any person shall constitute a misdemeanor.

These two sections read together would, as a simple matter of statutory construction, indicate that endorsement of a candidate in a direct primary election by a state or county central committee constitutes a misdemeanor.

Moreover, Cal. Elec. Code §29102 provides that "[e]very person charged with the performance of any duty under the provisions of any law of this state relating to elections, who willfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently

acts in contravention or violation of any of the provisions of such laws" is punishable by fine or imprisonment, or both. This statute appears to cover any actions plaintiffs might take in contravention of the statutes challenged in the second and third causes of action, which prevent plaintiffs from endorsing candidates in non-partisan elections and mandate certain organizational structures and procedures.

In the face of such clear mandates by the legislature to enforce the election laws, defendants' disavowal of any intention of enforcing them strikes the court as anomalous. Defendants explain that the state has no interest in enforcement because the challenged provisions embody the policies of the political parties themselves. Whatever the impetus for adoption of the statutes by the legislature, the prohibitions and affirmative requirements are clearly stated and on their face apply to plaintiffs. This alone can be sufficient to confer standing on the parties against whom challenged provisions are directed. *Doe v. Bolton*, 410 U.S. 179, 188-89 (1973) (physicians had standing to challenge criminal abortion statute despite absence of threat of prosecution because they were the "one[s] against whom these criminal statutes directly operated"); *Epperson v. Arkansas*, 393 U.S. 97 (1968) (teacher had standing to challenge state criminal statute prohibiting teaching of theory of evolution despite no record of prosecutions in forty-year history of statute).

In this case, plaintiffs have no clear assurance that they will suffer no criminal penalties if they engage in the prohibited conduct. While defendants' declarants state that they do not view an endorsement itself under § 11702 as constituting a criminal offense, they do not state that they

would refrain from enforcing §29430 against any central committee or member thereof who *used* such an endorsement in support of the candidate endorsed.[3] Obviously the purpose of an endorsement is not that it lies idly on the minute books. It is intended to be used by the party or candidate. Defendants have not said they would not enforce the criminal sanctions of §29430 against any person using the endorsement. Similarly, while defendants' declarants state that they do not view endorsement by plaintiffs of candidates for non-partisan offices or violation of the statutes governing the internal structure of plaintiff committees as constituting a criminal offense, plaintiffs have no guarantee that this interpretation would not change, particularly in view of the pressure that can be brought to bear in a highly charged political climate.

This is not a case in which the threat of enforcement is clearly lacking. It is not a case of an extremely old statute which has been openly flouted for years with no threat of enforcement, as was the case in *Poe v. Ullman*, 367 U.S. 497 (1961). There is no evidence in this case of violation of the challenged statutes since their inception.[4] Plaintiffs have submitted numerous declarations stating that they have in fact refrained from engaging in the desired political expression because of the statutes at issue. State and community political leaders should not have to become scofflaws in order to challenge the statutes.

In addition to the possibility that §29430 or §29102 will be enforced against plaintiffs who attempt to use an endorsement during a primary campaign, to endorse in non-partisan elections, or to structure their committees other than as required, there is no evidence before the court that defendants would not use their power to civilly

enforce the challenged provisions in the event of a violation. This prospect adds considerable weight to plaintiffs' contention that the controversy is ripe for adjudication. *See Babbitt v. United Farm Workers National Union*, 442 U.S. 289, 302 n.13 (1979) (the prospect of a civil cease-and-desist order or court-ordered injunction "provides substantial additional support for the conclusion that appellees' challenge . . . is justiciable"); *Seattle School District No. 1 v. Washington*, 633 F.2d 1338 (9th Cir. 1980) (plaintiff school districts had standing to challenge initiative which could be enforced only civilly.) Moreover, it is clear, and defendants' counsel conceded at oral argument, that the threat of a civil suit for an injunction by a disgruntled candidate or others is also a real possibility, were plaintiffs to endorse or otherwise violate the challenged provisions.[5]

It is important to emphasize that this case involves alleged violations of First Amendment freedoms of political speech and political association, freedoms which are among the most precious and jealously-guarded in our society. The declarations submitted by plaintiffs make clear that plaintiffs have refrained from exercising rights purported to be protected by the First Amendment, due to the existence of these statutes. This "chill" on the exercise of claimed constitutional rights clashes with the "profound national committment to the principle that debate on public issues should be uninhibited, robust, and wide-open. . . ." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). When First Amendment freedoms are at issue, it is even more important that those against whom restrictions are directly aimed, and who fear their enforcement, be given an opportunity to challenge them in court. *Cf. Johnson v. Stuart*, 702 F.2d 193, 195 (9th Cir. 1983) (in holding that

plaintiff, whose conduct was not regulated by the challenged restriction, lacked standing, court noted that plaintiffs in *Epperson* and other cases had been able to bring challenges on grounds of a chilling of free speech because the statutes challenged were aimed directly at them).

Moreover, this case arises in the unique context of the political arena. Political speech is the epitome of speech protected by the First Amendment. *See, e.g., First National Bank of Boston v. Bellotti,* 435 U.S. 765, 776-77 & n.12 (1978); *Buckley v. Valeo,* 424 U.S. at 14-15. Freedom of political association is no less fundamental. *Buckley,* 424 U.S. at 15. The same political context which makes these rights so precious also renders them vulnerable. The political climate, and a political office's unofficial interpretation of a statute, is subject to change, and assurances given today may be sacrificed tomorrow to political expediency. *See, e.g., People ex rel. Deukmejian,* 29 Cal. 3d 150, 154 (1981) (wherein the former state Attorney General had urged the Governor to sign into law the very statute the present Attorney General was attacking).

The bottom line is whether plaintiffs "have the 'personal stake in the outcome of the controversy' necessary to meet the requirements of Art. III." *Buckley v. Valeo,* 424 U.S. at 11, *quoting Baker v. Carr,* 369 U.S. 186, 204 (1962). The court is satisfied that there exists in this case a genuine case or controversy on each of plaintiffs' causes of action, and that the issues presented are not barred from adjudication on that ground.

4. *Abstention*

The final ground upon which defendants base their motion to dismiss is that the court should abstain from

deciding the issues presented by plaintiffs' second cause of action, concerning endorsements in non-partisan elections. The applicable test for abstention was enunciated by the Ninth Circuit in *Canton v. Spokane School District,* 498 F.2d 840, 845 (9th Cir. 1974), *quoting Railroad Commission of Texas v. Pullman Co.,* 312 U.S. 496, 498-99 (1941):

> (1) The complaint "touches a sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to its adjudication is open."
>
> (2) "Such constitutional adjudication plainly can be avoided if a definitive ruling on the state issue would terminate the controversy."
>
> (3) The possibly determinitive issue of state law is doubtful.

Defendants' abstention argument is based on the existence of a case pending before the California Supreme Court in which the issue is whether the Republican State Central Committee is barred from endorsing the recall or "non-confirmation" of a state Supreme Court justice. *Unger v. Superior Court,* 145 Cal. App. 3d 50 (1983), *appeal docketed,* S.F. No. 24659 (Nov. 14, 1983) (*"Unger II"*). While plaintiffs argue that the only issue before the California Supreme Court is the viability of the ban on endorsements in *judicial* elections, the fact is inescapable that Art. II, Sec. 6 of the California constitution and Cal. Elec. Code § 37 do not differentiate between judicial, county, city, and school offices in prescribing that all are to be "non-partisan" offices. Were the California Supreme Court to decide that these sections do not prohibit endorsements in judicial elections, that decision would clearly have an im-

pact on the ability to endorse in the other categories of "non-partisan" elections. There is thus a very real possibility that the decision of the California Supreme Court in *Unger II*, based upon its interpretation of state law, could render unnecessary the constitutional adjudication in this court of plaintiffs' second cause of action. This satisfies the second prong of the Ninth Circuit abstention test.

The other prongs are also met. First, plaintiffs' challenge involves state laws regulating elections for state judges, state school officials, and city and county officials, all of which the state has decided should be non-partisan offices. This satisfies the requirement that the complaint "touch[] a sensitive area of [state] social policy." Second, the language of the challenged provisions is by no means unambiguous, and the opinion of the California Attorney General in 1976, concluding that endorsements by county central committees were not barred in non-partisan elections. 59 Ops. Cal. Atty Gen. 60 (1976), contrasted with the decision of the California court of appeals in *Unger v. Superior Court*, 102 Cal. App. 3d 681, *cert. denied*, 449 U.S. 1131 (1980) ("*Unger I*") (see n.4, *infra*), indicate that the issue is disputed at the highest levels of state government. This satisfies the third requirement that "[t]he possibly determinative issue of state law [be] doubtful."

For these reasons the court concludes that defendants' motion for abstention insofar as it relates to plaintiffs' second cause of action must be granted. This court shall, however, retain jurisdiction over the matter.

Defendants make an attempt to argue that abstention should also be granted as to the first and third causes of action. However, it is highly unlikely that the California

Supreme Court in *Unger II* will reach conclusions having any bearing on the issues in those two causes of action. The Ninth Circuit's test for abstention is not met as to the first and third causes of action. Therefore, defendants' motion for abstention insofar as it is directed at plaintiffs' first and third causes of action is denied.

Plaintiff's Motion for Summary Judgment

Plaintiffs have moved for summary judgment on all three causes of action. As the court has concluded it must abstain from adjudicating the issues presented in the second cause of action, it will consider the motion only insofar as it is directed at the first and third causes of action.

1. *First cause of action*

Plaintiffs in their first cause of action challenge sections of the California Elections Code which prohibits them from endorsing, supporting, or opposing candidates in direct primary elections. They claim the statutes infringe First Amendment freedoms of political expression and political association. The challenged provisions bar the plaintiff organizations from expressing their collective views on candidates for their party's nomination to political office. This is a clear limitation on political expression.

The Supreme Court has observed that "[o]ur form of government is built on the premise that every citizen shall have the right to engage in political expression and association," noting that this right is a vital part of the First Amendment. *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957). Organizations, including political parties, are entitled to the same protections when they desire to speak as

a collective unit. "Exercise of these basic freedoms [of political expressions and political association] . . . has traditionally been through the media of political associations." *Id. See also Buckley v. Valeo,* 424 U.S. at 15 (1976) (First and Fourteenth Amendments guarantee freedom to associate together to advance political beliefs); *Citizens Against Rent Control v. City of Berkeley,* 454 U.S. 290, 295-96 (1981) ("[t]he Court has acknowledged the importance of freedom of association in guaranteeing the right of people to make their voices heard on public issues;" in striking down challenged section, Court noted it "cannot be used to hobble the collective expressions of a group.")

The limitation on plaintiffs' political expression regarding candidates in direct primary elections is in the form of a total bar. Plaintiffs have demonstrated the effect of this in their declarations. There is no greater burden on the freedom of speech than an outright governmental prohibition of any kind of expression by the target group on a particular topic, as is the case here.

Plaintiffs have also shown a substantial burden on their freedom of political association. The Supreme Court in *Buckley v. Valeo,* 424 U.S. at 15, emphasized the importance of protecting political association:

> The First Amendment protects political association as well as political expression. The constitutional right of association explicated in *NAACP v. Alabama,* 357 U.S. 449, 460 (1958), stemmed from the Court's recognition that "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association."

Where, as here, a state regulation significantly interferes with the fundamental freedoms of political expression

and political association, such interference will be sustained only if it is a narrowly-drawn means of implementing a compelling state interest. *Consolidated Edison Co. v. Public Service Commission,* 447 U.S. 530, 540 (1980)[6]; *First National Bank of Boston v. Bellotti,* 435 U.S. at 786; *Buckley v. Valeo,* 424 U.S. at 25. Moreover, " 'the burden is on the government to show the existence of such an interest.' " *Bellotti,* 435 U.S. at 786, *quoting Elrod v. Burns,* 427 U.S. 347, 362 (1976).

The state has totally failed to adduce any interest even approaching a "compelling" one.[7] In fact, even were the standard to be applied merely a "rational basis" test—which it clearly is not—defendants here would have failed to meet it on the basis of their submissions to this court.[8] In stark contrast to the more than two dozen declarations submitted by plaintiffs from individuals presently or formerly in positions of authority within the state and county central committees, individuals involved in party politics in other states, and professors of political science from all over the country, several of whom have specially studied the election process, defendants base their asserted "compelling state interest" on the speculations of one declarant, a former long-term California State Senator. Although he may be qualified to opine on the California political process, his opinions are not based on facts, but on speculations.

The state's asserted interest appears to be in "protecting the viability of a party's nominee and the coherence of its election process" and "safeguard[ing] the associational rights of those party members" who elected the party's nominees. Defendants' Opposition at pp.15

and 20. The theory behind this asserted interest is that if endorsements are permitted in direct primary elections, factions will develop within the official party organizations which will "preclude effective participation in party affairs and ignore the will of party members." *Id.* at p.18. Defendants conclude that permitting such endorsements by central committees would "disable" those committees from effectively conducting campaigns for the party's nominees in the general election. *Id.*

While defendants baldly assert that "[t]here can be no reasonable doubt" of this conclusion, *id.* at p.19, the *only* evidence proffered is the declaration of former State Senator Albert S. Rodda, Jr., whose "experience in party affairs convinces [him]" that such would be the case. Declaration of Albert S. Rodda, Jr. at p.3. Plaintiffs, however, have submitted the declarations of the Democratic Party chairpersons of the State of Washington and the City of Denver, and of the Mayor of Minneapolis, who state that party convention or central committee endorsements, or similar indications of support, are permitted of candidates for the party's nomination in their states. Plaintiffs have also submitted the declarations of professors of political science at Williams College and the University of Kentucky who have studied the election process and who note that political parties endorse primary candidates in other states, including Massachusetts, Connecticut, Rhode Island, North Dakota, New York, Illinois, Delaware, and Wisconsin. All of the declarants who addressed this issue, along with political science professors at the University of California at Berkeley and Georgetown University, agree, contrary to defendants' unsupported assertion, that allowing endorsements in primary

races strengthens a party. Defendants have made no showing whatsoever of any negative effects in states in which such endorsements are permitted.

Defendants have not demonstrated any burden on the associational rights of party members who directly elect the party's nominees in primary elections. They are apparently not asserting that such endorsements would have any coercive effect on party members; defendants agree that the endorsee of a central committee does not always win the party's nomination. Rather, defendants' argument that the state has a compelling interest in safeguarding the associational rights of party members is based on its perceived need to "provide party members themselves with the means of preserving some party organizations to carry out their will." Defendants' Opposition at p.18. This circular logic presupposes that permitting endorsements will in fact disable the central committee from effectively supporting the party's nominees, thus failing to "carry out [the] will" of the party members who chose those nominees. As already discussed, this assumption is entirely unsupported, and is effectively disproved by plaintiffs' declarations. Similarly, defendants' alleged interest in "protecting the viability of the party's nominee and the coherence of its election process" is premised upon the same unfounded assumption.

Defendants' reliance on *Storer v. Brown,* 415 U.S. 724 (1974) to support their assertion of a compelling state interest is misplaced. The Court in *Storer* upheld a California statute forbidding a place on the ballot to any independent candidate who had had a registered affiliation with a qualified political party within the year immed-

iately preceding the primary election. The Court noted that the issue involved was the integrity of the general election, which the state could properly protect from intraparty feuds; contending forces within a party could "settle their differences" during the primary campaign and primary election. *Id.* at 735. The holding in *Storer* supports defendants here only if, again, one accepts the assertion that allowing endorsements of candidates during the primary campaign would likely lead to intraparty feuds thereby disrupting the general election. That defendants have totally failed to support this assertion needs no further repetition.

As the above discussion has made clear, even granting defendants the benefit of all doubts, defendants have failed to set forth specific facts showing that there is a genuine issue for trial. There being no disputed issues of material fact, plaintiffs' motion for summary judgment as to the first cause of action is granted, the court finding that: § 11702 of the California Elections Code, on its face and as applied, is violative of the First Amendment to the United States Constitution as applied to the states through the Due Process Clause of the Fourteenth Amendment, as well as of 42 U S.C. § 1983[9]; and further finding that § 29430 of the California Elections Code is violative of the First Amendment as well as of 42 U.S.C. § 1983.

Plaintiffs have amply demonstrated that they have met the requirements for injunctive relief. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). It is clear that plaintiffs have no adequate legal remedies, since money

damages cannot compensate for the loss of freedom of political speech and association. Plaintiffs are therefore entitled to the injunction already ordered by this court against enforcement of Cal. Elec. Code § 11702.

2. *Third cause of action*

In their third cause of action plaintiffs challenge sections of the California Elections Code which regulate the internal organization of the state and county central committee. The challenged provisions dictate the manner in which state central committee members are selected, limit the chairperson of the state central committee to one two-year term, regulate the time and place of meetings of the state and county central committees, and limit dues.

The court finds that plaintiffs have, through their declarations, demonstrated a substantial burden on their First Amendment freedom of association insofar as the state statutes regulate the selection of members and the term of the chairperson of the state central committee. Plaintiffs have submitted a declaration from a member of the Santa Clara County Republican Central Committee and Republican State Central Committee stating that the membership selection method mandated for the state central committee of the Republican Party provides that three-quarters of the members are nominees or their appointees, and only one-quarter are county central committee chairpersons, or their appointees, a minimal role disproportionate to the importance of the county central committees. Declaration of David Sturrock.[10] The term of office of the leaders selected by the membership is of a piece with the membership selection process itself. Plain-

tiffs have persuasively argued that the ability to control membership selection is gravely weakened if the members are not permitted to make use of the services of an able leader for a long enough period of time to ensure effective administration.

The Supreme Court has declared that the freedom to associate "necessarily presupposes the freedom to identify the people who constitute the association, and to limit the association to those people only." *Democratic Party of the United States v. Wisconsin ex rel. LaFollette,* 450 U.S. 107, 122 (1981). In that case, the Court was faced with the question whether the State of Wisconsin could insist that its delegation be seated at the Democratic National Convention in the face of the refusal of the Party, which found that the state's rule binding its delegates to vote in accord with the results of an open primary violated Party Rules. The Court resolved the issue in favor of the Party, opining that "a State, or a court, may not constitutionally substitute its own judgment for that of the Party. A political party's choice among the various ways of determining the makeup of a State's delegation to the party's national convention is protected by the Constitution." *Id.* at 123-24.

The Court in *LaFollette* relied in great part on *Cousins v. Wigoda,* 419 U.S. 477 (1975), a case involving similar principles, in which the Court concluded that the rules of the National Party were to be accorded primacy over state law in determining "the qualifications and eligibility of delegates to the Party's National Convention." *Id.* at 483 & n.4 The *LaFollette* Court also cited approvingly in a footnote to *Ripon Society, Inc. v. National Republican Party,* 525 F.2d 567 (D.C. Cir. 1975) (en banc), *cert. denied,* 424 U.S. 933 (1976). In *Ripon* the court upheld against a

constitutional challenge a delegate allocation formula adopted by the National Republican Party, concluding that "a party's choice, as among various ways of governing itself, of the one which seems best calculated to strengthen the party and advance its interests, deserves the *protection* of the Constitution . . . . [T]here must be a right not only to form political associations but to organize and direct them in the way that will make them most effective." *Id.* at 585 (emphasis in original).

These cases make clear that a party's selection of its governing bodies is protected by the First Amendment right of association. The right to select members is an inherently crucial right in the organization of any association, as recognized by the Supreme Court. The right to decide who will have leadership roles is clearly as important, and the court concludes that plaintiffs have made a sufficient showing that the restrictions on the terms of committee chairpersons substantially burdens their associational right to make decisions concerning their own leadership.

Defendants, again, have failed to show anything approaching a compelling state interest in these restrictions. They make the conclusory allegation, with no supporting evidence, that it "is immediately obvious" that "the challenged provisions are designed to protect party organizations . . . from the predations of faction." Defendants' Opposition at pp.21-22. They further conclude that without the restrictions on membership selection "unrepresentative faction[s] could and historically did gain control of official party organizations." *Id.* at p.22. There is not a shred of evidence to support this assertion. Moreover, even if defendants had shown this to be a compelling state interest,

they would still have failed to show that there are no less restrictive means of achieving the goal of assuring that a party organization not be co-opted by an unrepresentative faction. Again, plaintiffs have submitted declarations stating that political parties in other states are regulated less severely. Defendants have submitted nothing which would indicate that as a result the parties in those states are weakened, or the rights of members are infringed.

As to the restrictions on the method of member selection and the terms of committee chairpersons, the court concludes that plaintiffs have met their burden of showing a substantial infringement of protected First Amendment rights, and defendants have failed to show a compelling state interest, or to set forth specific facts showing there are disputed issues of material fact. Plaintiffs' motion for summary judgment on the third cause of action is therefore granted insofar as it relates to the provisions regulating member selection and terms of office of committee chairpersons. For the same reasons outlined in the preceding section, plaintiffs are also entitled to a preliminary injunction against enforcement of those sections, as ordered in the court's Order of April 16.[11]

Insofar as plaintiffs' third cause of action challenges state regulations of the time and place of committee meetings and the amount of dues, the court finds that the declarations submitted by plaintiffs do not establish that the challenged sections place a substantial burden upon plaintiffs' freedom of speech or association. Although defendants' justifications are inadequate to sustain a compelling state interest, the court does not reach that until plaintiffs have shown the restrictions burden freedom of speech or association. Their declarations do not make that

showing. Plaintiffs' motion for summary judgment as to those sections is therefore denied, without prejudice to the filing of further declarations or submissions of other evidentiary material in support of a motion or at further proceedings.

Insofar as defendants have moved for summary judgment, the motion is denied, for the reasons explained above.

Dated: May 3, 1984

/s/ Marilyn Hall Patel
United States District Judge

FOOTNOTES

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[1] The district attorneys of Alameda, Santa Clara, and Solano counties have disclaimed any interest in this action.

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[2] The court attempted to accommodate defendants' complaints about the setting of these matters. One extension was granted for a short period of time. However, it should be noted this action was commenced on November 17, 1983. Defendants made no effort to move to dismiss until plaintiffs indicated their intention to move for summary judgment.

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[3] Defendants argue that the history of Cal. Elec. Code § 11702 indicates that plaintiff central committees would not be in violation of § 29430 by issuing slates stating their endorsements, citing *People v. Crutcher*, 262 Cal. App. 2d 750 (1968). However, it appears that the first sentence of present § 29430 was formerly the last sentence of § 11702, before the sections were revised in 1976. Legislative Committee Comment, 1976 Addition, to Cal. Elec. Code § 29430 (West 1977). A criminal penalty section was added at the time present § 29430 was enacted. Defendants have pointed to nothing in the history of the statutes which would indicate that § 29430 is inapplicable to the very section of which it formerly comprised a part.

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[4] The endorsement of candidates for non-partisan offices by county central committees prior to the decision in *Unger v. Superior Court*, 102 Cal. App. 3d 681, *cert. denied*, 449 U.S. 1131 (1980) (*"Unger I"*), holding that such endorsements were a violation of provisions making such offices non-partisan, is not to the contrary. Before the decision in *Unger I*, it was not believed that such endorsements rendered an election "partisan". *See* 59 Ops. Cal. Atty. Gen. 60 (1976).

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[5] The *Unger* cases provide a poignant example. Despite the Attorney General's opinion and nonenforcement, a private citizen, who was a candidate for a non-partisan school office, instituted two separate suits to enforce the statute. So far he has prevailed in both.

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[6] This case does not fit within the two other possible theories considered by the Court in *Consolidated Edison* by which a state might demonstrate that a restriction was constitutionally permissible. 447 U.S. at 535. The limitation here is not a time, place, or manner restriction; it is rather an outright ban. Nor is it a "permissible subject-matter regulation," which is a "narrow exception[] to the general prohibition against subject-matter distinctions" applied in certain cases involving the openness of a public facility. *Id.* at 539. Plaintiffs in this case are not attempting to gain access to a public facility.

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[7] The court notes that defendants' denial of any intent to enforce § 11702 also casts doubt on their assertion of a compelling interest in its continued existence.

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[8] The court feels compelled to comment on the quality of defendants' papers, which were almost totally lacking in substance. Instead, defendants resorted to hyperbole and unfounded accusations. To note a few examples, defendants accuse plaintiffs of employing a "subterfuge . . . to enlist the assistance of the court in their blatant power play" and of possessing "well-known meglomaniacal [sic] elitist tendencies." Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Defendants' Motions to Dismiss and for Summary Judgment ("Defendants' Opposition") at pp. 2 and 20. At p. 8 of the Memorandum is this paragraph:

> Plaintiffs' apparent contention that since renegade majorities (supposedly) of a few county central committees in recent years have, purportedly in the name of their party, endorsed candidates for nonpartisan office, it must be a legal and constitutional right bestowed on them as officials of the party is merely a recycling of the Watergate-type 'everybody has done it, therefore it must be right' boot-strap and question begging logic which masks a usurpation and abuse of power.

This accusation is not only inappropriate, it is incomprehensible. Defendants would have been better-advised to pay more attention to the substance of their legal argument, which was apparently sacrificed to intemperate rhetoric.

---

[9] Having decided the issue on the basis of a violation of the First Amendment, the court does not reach plaintiffs' Equal Protection argument.

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[10] See also Declarations of Bert Coffey and Edmond Constantini, discussing the same problem in the previously mandated method of selection for members of the Democratic State Central Committee, which was changed only after a hard-fought twenty-year battle with the legislature. Declarants state that in 1983 a bill was introduced without consultation with the Party, proposing a reversion to the previous, discarded system of member selection.

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[11] Having decided the issue on the basis of a violation of the First Amendment, the court does not reach plaintiffs' Equal Protection argument.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599 MHP

SAN FRANCISCO COUNTY
DEMOCRATIC CENTRAL
COMMITTEE, et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary
of State of the State of
California, et al.,

Defendants.

ORDER GRANTING PLANTIFFS' MOTION FOR SUMMARY JUDGMENT, DENYING DEFENDANTS' MOTION TO DISMISS, DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, STAYING PROCEEDINGS AS TO SECOND CAUSE OF ACTION, AND DIRECTING ENTRY OF FINAL JUDGMENT

(Filed April 16, 1984)

This matter having come before the court on plaintiffs' motion for summary judgment on all three causes of action stated in plaintiffs' First Amended Complaint, on defendants' motion to dismiss plaintiffs' First Amended Complaint, and on defendants' motion for summary judgment;

This matter having been fully briefed and argued by the parties;

The parties having had an opportunity to submit to the court factual material in support of their respective positions and no further extension having been sought for additional submissions;

The court having carefully reviewed the record in this matter, and having considered all the arguments;

It appearing that as to plaintiffs' motion regarding sections 8660, 8661, 8663, 8664, 8665, 8667, 8669, 9160, 9160.5, 9161, 9161.5, 9162, 9163, 9164, 9274, 9816, 11702, 29102, and 29430 of the California Elections Code, no genuine issue exists as to any material fact and that the plaintiffs are entitled to judgment as a matter of law; and

Good cause appearing therefor and for the reasons stated by the court from the bench and to be set forth more fully by written decision to be rendered hereafter;

IT IS HEREBY ORDERED that plaintiffs' motion for summary judgment as to the first cause of action is hereby granted in its entirety, and that:

(a) Section 11702 of the California Elections Code, on its face and as applied, is hereby declared violative of the First Amendment to the United States Constitution as applied to the states through the Due Process Clause of the Fourteenth Amendment, as well as of 42 U.S.C. section 1983;

(b) Section 29430 of the California Elections Code is hereby declared violative of the First Amendment to the United States Constitution as applied to the states through the Due Process Clause of the Fourteenth Amendment, as well as of 42 U.S.C. section 1983; and

(c) Defendants and their officers, agents, servants, employees, and attorneys and other persons acting in concert or participation with defendants are hereby permanently restrained and enjoined from

enforcing or seeking to enforce section 11702 of the California Elections Code;

IT IS FURTHER ORDERED, as to the second cause of action, that:

(a) All proceedings in this action regarding plaintiffs' second cause of action are hereby stayed until such time as the California Supreme Court shall issue an order, judgment, or opinion in the case of *Unger v. Superior Court*, No. 24659 (hearing granted November 14, 1983), presently pending before the California Supreme Court; and

(b) This court shall retain jurisdiction over this matter;

IT IS FURTHER ORDERED that plaintiffs' motion for summary judgment as to the third cause of action is hereby granted in part, and that:

(a) California Elections Code sections 8660, 8661, 8663, 8664, 8665, 8667, 8669, 9160, 9160.5, 9161, 9161.5, 9162, 9163, and 9164, relating to selection of State Central Committee members, and sections 9274 and 9816, relating to the terms of State Central Committee chairs, on their face and as applied, are hereby declared violative of the First Amendment to the United States Constitution as applied to the states through the Due Process Clause of the Fourteenth Amendment, as well as of 42 U.S.C. section 1983; and

(b) Section 29102 of the California Elections Code, as applied to those who violate the sections enumerated in subparagraph a of this paragraph, is

hereby declared violative of the First Amendment to the United States Constitution as applied to the states through the Due Process Clause of the Fourteenth Amendment, as well as of 42 U.S.C. section 1983; and

(c) Defendants and their officers, agents, servants, employees, and attorneys and other persons acting in concert or participation with defendants are hereby permanently restrained and enjoined from enforcing or seeking to enforce the sections enumerated in subparagraph a of this paragraph;

IT IS FURTHER ORDERED that:

(a) Plaintiffs' motion for summary judgment as to sections 8710, 8920, 8921, 9210, 9420, 9421, 9800, 9830, 9840, and 9841 of the California Elections Code, relating to the time and place requirements of State Central Committee meetings and County Central Committee meetings, is hereby denied; and that

(b) This denial is without prejudice to the filing of further declarations or submissions of other evidentiary material in support of a motion or at further proceedings;

IT IS FURTHER ORDERED that:

(a) Plaintiffs' motion for summary judgment as to sections 9275, 9818, and 9855 of the California Elections Code, relating to the $24 dues limitation, is hereby denied, notwithstanding the court's tentative ruling from the bench, the court having determined upon closer review of the declara-

tions submitted in support of plaintiffs' motion that the allegations with respect to the dues limitation do not establish that the challenged sections place a substantial burden upon plaintiffs' freedom of speech or assocation; and that

(b) This denial is without prejudice to the filing of further declarations or submissions of other evidentiary material in support of a motion or at further proceedings;

IT IS FURTHER ORDERED that defendants' motions to dismiss as to the first and third causes of action and for summary judgment as to all causes of action are hereby denied in their entirety;

IT IS FURTHER ORDERED that pursuant to Rule 54(b), Fed. R. Civ. P., this court hereby expressly determines that there is no just reason for delay of entry of final appealable judgments for plaintiffs as to the first cause of action and those portions of the third cause of action enumerated above, and hereby expressly directs the Clerk of the Court to enter this forthwith as final judgment for plaintiffs as to the first cause of action and the third cause of action insofar as summary judgment is granted; and

IT IS FURTHER ORDERED that defendants' motion to stay this order is hereby denied.

IT IS SO ORDERED.

DATED: April 16, 1984.

/s/ Marilyn Hall Patel
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599 MHP

SAN FRANCISCO COUNTY
DEMOCRATIC CENTRAL
COMMITTEE, et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary
of State of the State of
California, et al.,

Defendants.

JUDGMENT

Fed. R. Civ. P. 54(b)
(Partial)

(Filed April 16, 1984)

This action having come before this Court, the Honorable Marilyn Hall Patel, United States District Judge presiding, and the issues having been duly presented and a decision and order having been duly filed herein,

IT IS ORDERED AND ADJUDGED that plaintiffs' motion for summary judgment as to the first cause of action is granted and that plaintiffs' motion for summary judgment as to the third cause of action is granted in part as more specifically set forth in the accompanying order.

IT IS FURTHER ORDERED that defendants' motion to dismiss and/or for summary judgment as to the first and third causes of action is denied.

IT IS FURTHER ORDERED AND ADJUDGED that there being no just reason for delay, judgment shall be entered pursuant to Rule 54(b).

DATED: April 16, 1984.

/s/ Marilyn Hall Patel
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NO. C-83-5599-MHP

SAN FRANCISCO COUNTY
DEMOCRATIC CENTRAL
COMMITTEE, et al.,

Plaintiffs,

vs.

MARCH FONG EU, Secretary
of State of the State of
California, et al.,

Defendants.

ORDER FOLLOWING
REMAND

(Filed June 1, 1984)

This matter is here on remand on appellants' challenge to declarations of certain central committee appellees. The court has carefully reviewed the record before it and is not certain to what challenge the learned appellate court refers.

There appear to be three possible points in the record that could be interpreted as a challenge to the declarations or the authority of plaintiffs to bring the action, assuming a liberal interpretation of the term "challenge." One is a footnote in defendants' motion to dismiss. Since defendants did not see fit to incorporate this contention into the text perhaps the court did not give it the attention it gave other arguments contained in the body of the memorandum. "If the thought is important enough to deserve a place in the brief it can usually be fitted into the text." H. Weihofen, *Legal Writing Style*, Ch. 12, at 290 (2d ed. 1980). The footnote merely questions whether the committees have authorized the action and refers to matters necessarily outside the

pleadings. The court must assume for the purposes of a motion to dismiss that the allegations in the complaint are true. *See generally Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

Furthermore, defendants failed to comply with Rule 9(a), Fed. R. Civ. P., which requires a party raising capacity of any party to sue to do so by specific negative averment. This Circuit has held that a general denial or allegation on information and belief is insufficient to raise the issue and constitutes a waiver. *Summers v. Interstate Tractor and Equipment Co.*, 466 F.2d 42 (9th Cir. 1972); *Marks v. Brucker*, 434 F.2d 897 (9th Cir. 1970). *See also Ralston Oil and Gas Co. v. Gensco, Inc.*, 706 F.2d 685, 692 (5th Cir. 1983); *Garbincius v. Boston Edison Co.*, 621 F.2d 1171, 1174 (1st Cir. 1980). The State defendants filed their answer on December 16, 1983, several months before the motion to dismiss. No specific negative averments were made in the answer and defendants are properly deemed to have waived the issue. Despite the fact that defendants had not properly raised the issue, six of the eight central committee plaintiffs filed declarations on April 5.[1] Two others filed declarations after the hearing. These declarations stated their authority to bring the suit and the manner in which it was given.

Returning to the record and determining wherein the claimed issue was raised, the "challenge" appears nowhere in defendants' summary judgment papers. The only reference to authority to bring suit actually made in the summary judgment papers is in attorney Graybill's declaration. The declaration makes reference to certain representations regarding the Republican and Democratic State Central Committees. However, neither of them are parties to this action.

Finally, in the April 9, 1984 transcript of the oral argument, reference was made to declarations establishing authorization to bring suit. The court asked defendants' counsel if he was questioning the veracity of those declarations. He did not answer that question, but said he had not seen the declarations. The court issued its tentative ruling from the bench on April 9, 1984, a short form order on April 16, 1984, and its written decision on May 3, 1984. At no time in these proceedings or between the tentative ruling and the written decision did defendants challenge the veracity of the declarations which were made under penalty of perjury or submit any evidence to the court contradicting them. Nor did they seek leave for such purpose.

Giving a liberal interpretation to appellants' claim that certain issues were raised in this lower court and assuming the April 9 argument is the challenge referred to in the remand order, the court makes the following findings, conclusions and clarification.

First of all, the court found it was "not persuaded by any standing challenge" made by defendants. (R.T. 52:17-19). Implicit therein is the conclusion that the parties had authorization.[2]

Furthermore, the court has before it uncontroverted declarations under penalty of perjury from each of the eight central committee plaintiffs stating authorization has been given and the method by which it was given. The court is not prepared to assume that the eight officers lied under penalty of perjury nor is there any basis for disregarding the declarations. There being no facts in evidence controverting the declarations, the court finds that the plaintiff central committees and each of them have authorization and capacity to bring and maintain this litigation.

As to whether appellees have authority to bring an appeal, this court will not intrude upon the province of the appellate court to make that determination.

IT IS SO ORDERED.

Dated: 1-Jun 1984

/s/ Marilyn Hall Patel
United States District Judge

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FOOTNOTE

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[1] This may have been the result of the footnote or some informal request. The remand order makes reference to appellants' seeking discovery. The record before this court reveals no requests pursuant to Fed. R. Civ. P. 34 or any other discovery provisions under the Federal Rules of Civil Procedure. Nor was any motion to compel brought pursuant to Rule 37. Once again, defendants chose to raise this issue, if at all, in the footnote.

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[2] Of course, capacity to sue is not the same as standing. It is not jurisdictional and it may be waived. The court further notes that there are a number of parties to this litigation whose authorization is not in question and who have been held to have standing in this court's May 3 order.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 84-1851
DC NO. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Plaintiffs-Appellees,

v.

MARCH FONG EU, Secretary of State of the State of California; JOHN VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County, et al.,

Defendants-Appellants.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

(Filed August 14, 1986)

Notice is hereby given that defendants-appellants, March Fong Eu, Secretary of State of the State of Cali-

fornia, John K. Van de Kamp, Attorney General of the State of California, Arlo Smith, District Attorney of the City and County of San Francisco, and Leo Himmelsbach, District Attorney of the County of Santa Clara hereby appeal to the Supreme Court of the United States from the final judgment of the U.S. Court of Appeal for the Ninth Circuit entered on June 18, 1986 affirming summary judgment against defendants entered by the U.S. District Court of the Northern District of California.

This appeal is taken pursuant to 28 U.S.C. § 1254(2).

DATED: August 13, 1986.

JOHN K. VAN DE KAMP
Attorney General

N. EUGENE HILL
Assistant Attorney General

PAUL H. DOBSON, Supervising
Deputy Attorney General

/s/ GEOFFREY L. GRAYBILL
Deputy Attorney General

Post Office Box 944255
1515 "K" Street, Suite 511
Sacramento, CA. 94244-2550
(916) 324-5465

DECLARATION OF SERVICE BY MAIL

Case Name: SFDCC v. Eu No.: 84-1851

I declare

I am employed in the County of Sacramento, California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 1515 K Street, Suite 511, Sacramento, California 95814.

On August 13, 1986, I served the attached

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California, addressed as follows:

Cedric C. Chao
MORRISON & FOERSTER
345 California Street
San Francisco, CA. 94104-2105

I declare under penalty of perjury the foregoing is true and correct, and that this declaration was executed at Sacramento, California, on August 13, 1986.

BARBARA PAYNE (Typed Name) /s/ Barbara Payne (Signature)
DSM-1

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 84-1851
DC NO. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiff-Appellees,

v.

MARCH FONG EU, Secretary of the State of California, et al.,

Defendant-Appellants.

ORDER

(Filed August 14, 1986)

BEFORE: NORRIS, Circuit Judge:

Upon due consideration of Appellants' motion for continuance of a stay of the mandate of this Court in the above cause pending the filing of an appeal to the United States Supreme Court, such appeal to be filed on or before September 16, 1986,

IT IS ORDERED that the motion for continuance be GRANTED.*

DATED: 8/12/86

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* In the event that the appeal is timely filed, "the stay shall continue until final disposition by the Supreme Court." Fed. R. App. P. 41(b).

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851
DC No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiff-Appellees,

v.

MARCH FONG EU, Secretary of the State of California, et al.,

Defendant-Appellants.

ORDER

(Filed November 29, 1985)

Before: WRIGHT, SKOPIL, and NORRIS, Circuit Judges

All supplemental briefs and reply briefs having been received, this case is resubmitted.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851
DC No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiff-Appellees,

v.

MARCH FONG EU, Secretary of the State of California, et al.,

Defendant-Appellants.

ORDER

(Filed August 5, 1985)

Appeal from the District Court for the Northern District of California

Hon. Marilyn Hall Patel, U.S. District Judge, Presiding
Before: WRIGHT, SKOPIL and NORRIS, Circuit Judges.

Because of the difficult issues presented by this case, we order the parties to file supplemental briefs directed to the following issues.

1. Are the state and county central committees private associations entitled to the full protections of the First and Fourteenth Amendments of the United States Constitution?

2. Is California's regulation of the composition of state central committees and the term of committee chairpersons in violation of the First and Fourteenth Amendments?

3. If the court affirms the district court's invalidation of the statutes challenged in the third cause

of action, should the court consider additional remedies to assure the orderly transition from a regulated to an unregulated system of selection.

Appellants should file their brief within 20 days of the date on which this order is filed. Appellees shall file a responsive brief within 15 days thereafter. The briefs shall be no longer than 30 pages in length.

This case is ordered vacated from submission. The case will be resubmitted when both briefs are filed without further order from this court.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851
DC# 83-5599 MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, SAN FRANCISCO COUNTY REPUBLIAN CENTRAL COMMITTEE, LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.

Plaintiffs-Appellees,

vs.

MARCH FONG EU, Secretary of the State of California, JOHN VAN DE KAMP, Attorney General of the State of California, ARLO SMITH, District Attorney of San Francisco County, et al.,

Defendants-Appellants.

ORDER

(Filed June 18, 1984)

BEFORE: WRIGHT, SKOPIL and NORRIS, Circuit Judges.

The appellants may, if they desire, file supplemental briefs with this court concerning the authority of the appellees to bring this action and appeal. If they brief this issue, such briefs shall be filed within ten (10) days of the date of this order. Appellees will then have ten (10) days to file a responsive brief. All briefs shall be limited to discussion of this issue and no brief shall exceed ten (10) pages in length.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851
DC# CV-83-5599 MHP
Northern California

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs-Appellees,

vs.

MARCH FONG EU, etc., et al.,

Defendants-Appellants.

ORDER

(Filed May 25, 1984)

Before: WRIGHT, SKOPIL and NORRIS, Circuit Judges

This appeal was argued and submitted on May 15, 1984. Among the issues raised, appellants challenged the declarations of the central committee appellees, who asserted they were authorized to bring this action. In support of this challenge, appellants sought discovery of committee bylaws and minutes, which were not provided by appellees.

The district court neglected to rule on this challenge. We remand to that court to make findings of fact and conclusions of law with respect to the authority of appellees to bring the action and appeal.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 84-1851
DC# CV-83-5599 MHP
Northern California

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs-Appellees,

vs.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants-Appellants.

ORDER GRANTING EMERGENCY MOTION FOR STAY

(Filed April 24, 1984)

Before: WRIGHT, SKOPIL and NORRIS
Circuit Judges.

The court has considered the appellants' Emergency Motion for Stay on Appeal and the supporting material, together with Appellees' Memorandum in Opposition. The motion seeks a stay of the judgment of April 16, 1984, as to which a notice of appeal was filed on that date.

IT IS ORDERED that the motion is granted and the judgment is stayed until further order of this court. The appeal is expedited. Oral argument on the merits will be heard at 1:30 p.m. on Tuesday, May 15, 1984, in San Francisco.

Any supplemental briefs will be filed with the clerk by Tuesday, May 8, 1984.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

P. O. Box 547
San Francisco, CA 94101
Court Of Appeals Docket Number
84-1851
(if known)

CIVIL APPEALS
DOCKETING STATEMENT

Case Name: S.F. County Democratic Central Committee, et al. v. March Fong Eu, et al.

District Court or Agency: U.S. District Court for the Northern District of Calif.

District Court/Agency Docket No.: C-83-5599 District Judge: Marilyn Hall Patel

Party or Parties filing appeal/petition: Defendants March Fong Eu, John K. Van de Kamp, Arlo Smith, and Leo Himmelsbach

A. *Timeliness of Appeal or Petition for Enforcement or Review*

(1) Date of entry of judgment or order appealed from: April 16, 1984

(2) Date notice of appeal or petition filed: April 16, 1984

(3) Authority fixing time limit for filing notice of appeal or petition:

Fed. R. App. P. 4(a)(1) ____x____

Fed. R. App. P. 4(a)(4) _____

Fed. R. App. P. 4(a)(3); _____

Fed. R. App. P. 4(a)(5); _____

Service date of any motion
listed in

Fed. R. App. P. 4(a)(4): _____
Other (specify) _____

(4) Time limit for filing notice of appeal or petition: 30 days from entry of judgment.

B. *Appeal From District Court*

(1) Is the order appealed from a final order (i.e., does it dispose of the *action* as to *all claims* by *all parties)?* ____ No. ____

(2) If the order is not a final disposition, did the district court direct the entry of judgment in accordance with Fed. R. Civ. P. 54(b)?

____ Yes. ____

(3) If not final, is the order properly appealable as an injunction under 28 U.S.C. § 1292(a)(1)?

____ Yes. ____

(4) If none of the above applies, what is the basis for seeking appellate review? _____

C. *Review of Agency Decision*

If the appeal is from an agency decision, what statute or other authority grants this court power to review that decision? _____

D. *Nature of Disposition Below:*

( ) Bench Trial
( ) Jury Verdict
(xx) Summary Judgment
( ) Agency Order
( ) Default Judgment
( ) Grant/Denial of Injunction
( ) Dismissal:
  ( ) Lack of Jurisdiction
  ( ) Failure to State a Claim
  ( ) Failure to Prosecute
  ( ) Other
( ) Other (specify) _____

E. *Length of Trial or Hearing:* ____ 2 hours ____

F. *Related Cases:* List all related cases pending in this Court of Appeals as defined in Ninth Circuit Rule 13(b)(4): _____ N/A. _____

G. *Nature of Relief Sought Below:*

( ) Damages: amount sought: $_____ amount granted: $_____

(X) Injunctive Relief:

( ) preliminary or (X) permanent
(X) granted or ( ) denied

(X) Declaratory Relief:

(X) granted or ( ) denied

( ) Attorney's fees: amount sought: $_____ amount granted: $_____

( ) Other (specify) _____

PLEASE CONFINE YOUR RESPONSES TO H, I, AND J TO THE SPACE PROVIDED.

H. Brief Description of Nature of Action and Result Below:

Complaint for declaratory and injunctive relief brought purportedly by 6 county Democratic Central Comm. and one Republican County Central Comm., the State Libertarian Party Central Comm., a few members thereof, a few party activists and a special interest group calling itself the National Comm. for Party Renewal, with its chapters the Northern and Southern Calif. Comm. for Party Renewal, challenged a number of provisions of the Calif. Elec. Code on the theories that the provisions constituted substantial burdens upon plaintiffs' 1st Amend. rights to freedom of association and expression which are invalid as violations of the 14th Amendment.

Defendants are 7 district attorneys, the Attorney General, and the Secretary of State of Calif., none of whom

have been involved in the enforcement of any of the challenged statutes.

On cross-motions for summary judgment and defendants' motion to dismiss, the District Court entered an order and judgment which invalidated and enjoined the enforcement of Elec. Code sec. 11702 which prohibits party central committees from endorsing candidates for the party nomination for partisan office in the primary elections. The judgment also invalidated and enjoined enforcement of provisions which describe the composition and method of selection of the Republican and Democratic State Central Comm. and the terms of the chairpersons of the Republican and Libertarian State Central Comm. The District Court denied plaintiffs' motion regarding provisions, time and place requirements for meetings of state and county central comm. and limitations on dues which can be required of county comm. members. Defendants' motions for dismissal of jurisdictional (including 11th Amendment) grounds and for abstention were denied as was their motion for summary judgment as to each cause of action and each portion thereof.

I. Issues to be Raised on Appeal:

1. Is there jurisdiction under Article III of the U.S. Constitution to decide each of the issues raised by the complaint?

2. Do prudential principles emanating from Article III and self-governance of the Federal judiciary preclude deciding the issues raised by the complaint?

3. Does the Eleventh Amendment bar the complaint where defendants have not been involved in enforcement of the challenged statutes?

4. Should the District Court have abstained from considering the issues raised by the First and Third Causes of Action?

5. Is the summary judgment erroneous as to each statute which it invalidated?

6. Was summary judgment inappropriate in the context of this case?

7. Should defendants have been granted summary judgment as to each statute challenged by the complaint?

J. Standard of Appellate Review as defined in Ninth Circuit Rule 13(b)(2) (Specify the proper standard of review to be applied by the Court of Appeals for each issue to be raised, citing relevant authority.)

ISSUES: 1 & 2. De novo review — *Juidice v. Vail* (1977) 430 U.S. 327, 331; *Pac. Legal Found.* v. State Energy Resources Etc. (9th Cir. 1981) 659 F.2d 903, 910;

3. De novo review — *Jacobson* v. *Tahoe Regional Planning Agency* (9th Cir. 1977) 558 F.2d 928, 939;

4. De novo review — *Tomiyasu* v. *Golden* (9th Cir. 1966) 358 F.2d 651, 654-655;

5. De novo review — *Garter-Bare Co.* v. *Munsingwear, Inc.* (9th Cir. 1980) 622 F.2d 416, 422;

6. De novo review — *Askew* v. *Hargrave* (1971) 401 U.S. 476, 478-479;

7. De novo review — *International Longshoremen's Ass'n.* v. *Seatrain Lines, Inc.* (2nd Cir. 1964) 326 F.2d 916, 920-921, n. 2.

K. Do you desire oral argument on this appeal? Yes X No ____ If yes, why in your opinion should oral argument be heard _____

The issues presented on appeal concern the jurisdiction of federal courts under Art. III and the Eleventh Amendment to the U.S. Constitution and the State's right to protect the First Amendment rights of members of ballot qualified political parties and to regulate elections which it conducts. The State has been deprived of a fair hearing on these issues and heeds every opportunity to present its case.

L. Attorneys representing appellee(s)/respondent(s)

Appellee(s) S.F. County Democratic Central Committee, et al.

Attorney Morrison & Foerster
Telephone (415) 777-6000

Address: One Market Plaza, Spear Street Tower
San Francisco, CA 94105

Appellee(s) .....

Attorney ..... Telephone ( ) .....

Address: .....

.....

(List additional counsel on separate paper if necessary).

M. Attorney or Party (if pro se) filing docketing statement:

NAME Geoffrey L. Graybill,
Deputy Attorney General

(Telephone) (916) 324-5465

ADDRESS 1515 K Street, Suite 511
Sacramento, CA 95814

Check one: (XX) Attorney ( ) pro se

Check one: (XX) Appellant ( ) Appellee
( ) Cross-Appellant
( ) Cross-Appellee

....
Signature Date

(If this is a joint statement, add names and addresses of other counsel below or on an additional sheet together with certification that they all have concurred in the filing of this statement).

Attach a copy of the judgment or order appealed from and any opinion, findings of fact or conclusions of law supporting the judgment or order. This docketing statement must be accompanied by a proof of service of the statement on opposing counsel.

JOHN K. VAN DE KAMP, Attorney General
of the State of California

N. EUGENE HILL
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FONG EU et al.

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Attorneys for Defendant ROBERT
PHILOBOSIAN, District Attorney,
County of Los Angeles

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC
CENTRAL COMMITTEE et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State
of the State of California et al.,

Defendants.

DECLARATIONS IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANTS' MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT

Date: April 9, 1984

Time: 10:30 a.m.

(Filed March 29, 1984)

DECLARATION OF ANTHONY L. MILLER

DECLARATION OF NELSON KEMPSKY

DECLARATION OF ALBERT S. RODDA, JR.

DECLARATION OF GEOFFREY L. GRAYBILL

JOHN K. VAN DE KAMP, Attorney General
of the State of California

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Attorneys for Defendants

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs,

vs.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

DECLARATION OF ANTHONY L. MILLER

I, Anthony L. Miller, declare as follows:

1. I am the Chief Deputy Secretary of State and have served the Secretary of State of California, March Fong Eu, in this capacity since January 1981. Prior to being appointed Chief Deputy by the Secretary of State, I served pursuant to her appointment as Chief Counsel to the Secretary of State from March 1976 to January 1981.

2. In my capacities as Chief Counsel and Chief Deputy, I have been involved in all elections law enforcement

activities of the Office of Secretary of State. I am also familiar with the records of the Office of Secretary of State and have consulted with the permanent civil service staff regarding the elections law enforcement activities of the office prior to the tenure of March Fong Eu.

3. I have been authorized by the Secretary of State to make the statements in this declaration on her behalf and on behalf of the Office of the Secretary of State.

4. The Office of Secretary of State has never been involved in regulating or monitoring the internal organization operations activities or procedures of political parties in the State of California. The Secretary of State has never referred a matter involving the organization, operations, procedures or activities of a political party to the Attorney General or a district attorney. The Office of Secretary of State does not view the failure to conform party organization, activity, procedure or operations to statutes regarding those matters as constituting a criminal offense defined by any provision of the Elections Code.

5. The primary responsibility of the Secretary of State as chief elections officer of the state is to monitor and regulate the actions of local elections officers (e.g., the county clerks and registrars) to assure that they perform their duties as prescribed by state elections laws. (See Gov. Code, § 12172.5; Elec. Code, § 55.)

6. The Office of Secretary of State does not monitor the activities of candidates or political organizations during campaigns and elections or otherwise. The Office of Secretary of State has never referred a person or organization to the attention of the Attorney General or a district

attorney for endorsing a candidate for the nomination of a political party or a candidate for a non-partisan office.

7. The Office of Secretary of State does not view the endorsement of a candidate for the nomination of a party by that party's convention, state central committee or county central committee or the members thereof to constitute a criminal offense defined by any provision of the California Elections Code; moreover, it does not view the endorsement of candidates for non-partisan office by such organizations and persons to constitute a criminal offense as defined by any provision of California Elections Code.

If called as a witness I would testify of my personal knowledge as stated herein.

Executed at Sacramento, California on March 21, 1984.

I declare under penalty of perjury that the foregoing statements are true and correct.

/s/ Anthony L. Miller

JOHN K. VAN DE KAMP, Attorney General
of the State of California
N. EUGENE HILL, Assistant
Attorney General
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Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

DECLARATION OF NELSON KEMPSKY

I, Nelson Kempsky, declare as follows:

1. I am Chief Deputy Attorney General of the State of California and have served in that capacity through appointment by John K. Van de Kamp, Attorney General of California, since January 1983. I am responsible directly to the Attorney General for administration of the business of the Office of the Attorney General and the Division of Law Enforcement of the California Department of Justice.

2. Prior to my appointment as Chief Deputy I was a Deputy Attorney General in the Criminal Division of the

Office of the Attorney General from 1965 to 1972, 1977-1979 and 1980 to January 1983. From 1972 through 1977 I served as a Deputy Director of the Department of Corrections and from 1979 to 1980 I served as Director of the Division of Law Enforcement of the California Department of Justice.

3. The Office of Attorney General briefs and generally argues the state's case in virtually every appeal of a conviction of a felony criminal offense or in any other form of review of such a conviction by any appellate court. Moreover, the Department of Justice usually becomes aware of any unusual enforcement actions taken by law enforcement agencies in California. Enforcement action with respect to endorsements and political party activities would be considered unusual and be the subject of reports within the Department of Justice. I and the employees of the Department of Justice with whom I have consulted routinely receive reports and monitor documents that provide such information.

4. The California Department of Justice including the Office of the Attorney General and the Division of Law Enforcement does not and, to my knowledge, has not monitored the activities of the political parties in the State of California, nor has it taken any action to enforce any statutes regarding their organization or the conduct of their business. I have consulted with several other employees of the Department of Justice who would know if the Department had taken enforcement action with respect to such statutes and none of them is aware of any such action having been taken. The Department of Justice does not consider violation of such statutes to constitute a criminal offense defined by any provision of the California Elec-

tions Code. I am not aware of any instance where any district attorney has taken any enforcement action with respect to such statutes. I have consulted with several other employees of the Department of Justice who would know if any district attorney had taken enforcement action with respect to such statutes and none of them is aware of any such action having been taken.

5. The California Department of Justice has not to my knowledge taken any enforcement action regarding endorsement of a candidate for the nomination of a political party by the state convention, state central committee, a county central committee of that party or any member thereof. I have consulted with several other employees of the Department of Justice who would know if the Department has taken any enforcement action regarding such endorsements and none of them is aware of any such action having been taken. The California Department of Justice does not consider any such endorsement by state conventions, state central committees and county central committees to constitute a criminal offense as defined by any provision of the California Elections Code including sections 29430 and 29102. Elections Code section 11702 does not define a criminal offense. I am not aware of any instance where any district attorney has taken any enforcement action against any person or organization involving such endorsements. I have consulted with several other employees of the Department of Justice who would know if any district attorney had taken enforcement action with respect to such endorsements and none of them is aware of any such action having been taken.

6. The California Department of Justice has not to my knowledge taken any enforcement action against any

person or organization for endorsement of a candidate for a non-partisan office. I have consulted with several other employees of the Department of Justice who would know if the Department of Justice had taken any enforcement action with respect such persons or organizations and none of them is aware of any such action having been taken. The Department of Justice does not consider such endorsements by any person or organization to constitute a criminal offense defined by the Elections Code. I am not aware of any instance where any district attorney has taken any enforcement action against any person or organization involving such endorsements. I have consulted with several other employees of the Department of Justice who would know if any district attorney had taken enforcement action with respect to such endorsements and none of them is aware of any such action having been taken.

If called as a witness I would testify as stated herein of my own knowledge.

Executed at Sacramento, California on March 23, 1984.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Nelson Kempsky

JOHN K. VAN DE KAMP, Attorney General
of the State of California
N. EUGENE HILL
Assistant Attorney General
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Attorneys for Defendants MARCH
FONG EU

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC
CENTRAL COMMITTEE et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State
of the State of California, et al.,

Defendants,

DECLARATION OF
ALBERT S. RODDA, JR.

I, ALBERT S. RODDA, JR., declare as follows:

I. I have been active in the affairs of the California Democratic Party throughout my adult life.

2. From 1958 until 1980 I had been elected and re-elected as the nominee of the Democratic Party to represent Sacramento County in the Senate of the California

Legislature. I represented Sacramento County in the State Senate continuously from 1958 through December 1980.

3. I earned a Ph.D. in American history from Stanford University in 1951 and taught economics and California history at Sacramento City College from 1946 to 1967 when I resigned to devote full time to my duties in the State Senate.

4. From 1952 through 1958 I was a member of the Sacramento County Democratic Central Committee and served as chairperson of the Committee during 1956 and 1957.

5. As a member of the State Senate I was, pursuant to the Charter of the California Democratic Party as ratified by statutes of the State of California, a member of the California Democratic Central Committee.

6. During my twenty-two years in the State Senate changes to statutes regarding the structure and procedures of the major political parties were enacted at the request and with the concurrence of the party affected. The members of the Legislature from one political party acquiesced in and did not attempt to influence legislation sponsored by the members of the other party regarding the affairs of that party. The legislation regarding the affairs of a political party was enacted, therefore, at the request of and with the support of the party affected.

7. The Democratic and Republican parties of California have traditionally supported the California election law which denies the state convention, the state central committee, and the county central committees the au-

thority to endorse candidates seeking the nomination of the party in a primary election. The reason for this support by the parties for the past half century is the determination to guarantee a continuation of the delineation of party responsibilities embodied in the original law which was enacted in 1911 as a result of a political reform movement engaged in by the leaders of both parties.

8. During the time I have been a member of the Democratic Party the role assigned by the party to the convention and the central committees has been that of working for the election of the party's nominees for statewide office, the Legislature and Congress. The central committees, especially the county central committees, must be cohesive and aggressive teams in order to carry out this function.

9. If the state and county central committees were allowed to endorse candidates for the party's nomination, my experience in party affairs convinces me that the process of determining an endorsement which is contested, even if the endorsement is ultimately unanimous through abstentions or otherwise, would produce divisiveness in the committee which would impede its ability to carry out its primary function—that of working for the election of the party's nominee in the November general elections.

10. State and county central committees, by virtue of the fact that they do not participate in primary elections, are able consistently to function as a self-healing mechanism for the party because the credibility of the committee as a neutral has a capability of functioning as a catalyst through which the previously competing fac-

tions within the party can cooperate in achieving the election of the party's nominees.

11. There is a possibility also that the divisiveness resulting from central committee involvement in partisan primary elections will weaken the loyalty of elected officials, including members of the Legislature, to their party and generate over a period of time some political momentum to return to the cross-filing type of primary, a practice in California which favored incumbents and weakened the effectiveness of political parties. Such an eventuality would tend to dilute even further the influence of the political parties in the election of partisan officeholders.

12. The dynamics involved in endorsement by central committees of candidates for nonpartisan office are similar. The endorsement process creates divisiveness within a central committee which can adversely affect the committee's ability to campaign effectively for the party's nominees in the November elections, which is the committee's primary function and the justification for its existence. Moreover, successful candidates for nonpartisan offices whose opponents were endorsed by a central committee will, in many cases, carry resentments against the party organization during their political careers which is likely to be contrary to the interests of the party organization.

13. The uniform ban on primary endorsements by state and county central committees effected by state law has been supported by both the California Democratic and Republican parties because it is unquestionably in their interests.

14. The parties have established central committees for the purpose of securing the election to office of the nominees who are selected by party members at the primary elections. Everyone who seeks election to a county central committee and is elected knows that that office is limited in its responsibilities and that that is its function. Democratic and Republican county committee members who seek to expand this role to pre-primary endorsements are undertaking an effort to change dramatically the concept embodied in the primary election law which was originally enacted in this state by a coalition of reform Republicans and Democrats as a means of strengthening the role of the people in the political process and weakening that of organized special interest groups which dominated California politics in the latter part of the 19th century and the first decade of the 20th century. The abandonment of this practice, nonendorsement of nonpartisan candidates and of partisan candidates in primary elections, will create intraparty fragmentation into rival groups and generate serious personal rivalries and factionalism.

15. The wisdom of the ban on endorsements by state and county central committees is borne out by an experience I had as a member of the Sacramento County Democratic Central Committee. In accordance with procedures set out in its bylaws, the committee in early October approved a brochure in the form of a sample ballot for the November general election marking the Democratic Party's nominees for all of the partisan offices on the ballot. Afterwards and without presenting it for consideration by the committee in accordance with the bylaws, the chairperson and a few of his associates

added the name of a candidate for the superior court to the brochure and marked the mock ballot demonstrating an endorsement by the committee. Not only did the vast majority of the committee view the endorsement as illegal, as a violation of state party policy and as in violation of the policy and procedures of the committee, but they did not favor the candidate who was endorsed. This incident created so much divisiveness and bad feeling amongst the members of the committee that it could not function in the remainder of the general election campaign. The newspapers gave extensive coverage to the conflict within the committee.

16. Opportunities abound for party members to associate in endorsing candidates for the nomination of the party and for nonpartisan office. I have been active in several such associations which have been very effective. I was an active leader in Sacramento County in bringing into existence the California Democratic Council in the early fifties and in helping create a number of local Democratic Clubs. I also have been a member of the Harry S. Truman Club since its establishment in Sacramento. It supports, on a selective basis, Democratic candidates seeking the nomination of the party in partisan primary elections and also candidates for nonpartisan elective office who are registered as Democrats.

17. The Democratic Party has among its members persons of all ethnicities and races and of widely varying backgrounds whose interests and views are often conflicting. One of the features of the party which distinguishes it from other political parties and commands the allegiance of its members is its commitment in its own

governance to openness and responsiveness to all factions. I have read the first amended complaint of the legal action for which I am submitting this declaration. The statutes which are challenged by the complaint are essential to preventing one faction or another from co-opting official party organizations at the state or local levels. Without the power to endorse candidates for the party's nomination or nonpartisan office, factions have little incentive to try to co-opt central committees and therefore persons interested in doing the "nuts and bolts" work of the party become members of the central committees. When co-option of a party organization by a faction occurs the other factions are often excluded from effective participation in official party organization, become alienated and their allegiance to and confidence in the Party dissipates. The effectiveness of the Party is severely damaged as a result. The statutes regarding party organization and procedure provide some protection against devices used by factions to exclude others from participation in party affairs.

18. My career and experience demonstrate, and I know, that the individual plaintiffs can associate with others to effectively participate in the campaigns of their favored candidates for the party's nomination or for nonpartisan office notwithstanding the bans by statute and party policy of endorsements by official party organizations. Party organizations can and do provide or sponsor workshops for interested potential candidates. There is never any shortage of interested and qualified candidates and the voting members of the party are perfectly capable of discerning which candidate for the nomination

or nonpartisan office fit their perception of what a "good" Democrat is.

19. In 1972 I authored Senate Constitutional Amendment 32 which revised article II of the California Constitution relating to suffrage. SCA 32 was passed by the Legislature and signed by the Governor. It was adopted by vote of the people as Proposition 7 on the ballot for the general election in November 1972. A copy of the ballot pamphlet for the November 1972 election as it pertains to Proposition 7 which was distributed by the California Secretary of State to all registered voters is attached hereto as Exhibit A. Also attached hereto as collective Exhibit B are a copy of a letter, with a five-page attachment, from me to all of my colleagues in the Senate explaining SCA 32 and urging its passage, a copy of the report of the Constitution Revision Commission upon which sections 4 and 5 of article II as enacted in 1972 were based and a copy of the report of the Senate Elections and Reapportionment Committee on SCA 32.

20. As is apparent from Exhibits A and B, section 4, relating to primary elections for partisan office did not eliminate any of the power of the Legislature to regulate political parties and the terms and conditions upon which political parties may participate in primary elections. As the Constitution Revision Commission points out in its analysis, the verbiage of former section 2.5 of article II relating to primary elections was unnecessary because the Legislature notwithstanding section 2.5 of article II had the power to and had enacted a comprehensive scheme of law governing political parties and their participation in primary election which would be unaffected by enactment of section 4. As I explained to my colleagues in the

Legislature and the voters in urging them to enact SCA 2 and Proposition 7, section 4, effected no change in the Constitution but merely eliminated excess verbiage.

21. As is apparent from Exhibits A and B, I also explained that section 5 continued the ban of section 2¾ on participation by political parties in elections for judicial, school, county and city offices but merely changed the outdated term "township" to the modern term "city" and eliminated verbiage which was redundant due to existing statutes governing elections which the Legislature was otherwise empowered to enact.

If called as a witness, I would testify of my personal knowledge as stated above.

Executed at Sacramento, California, on March 23, 1984.

I declare under penalty of perjury that the foregoing statements are true and correct.

/s/ Albert S. Rodda, Jr.

(Exhibits A and B omitted in printing)

JOHN K. VAN DE KAMP, Attorney General
of the State of California
N. EUGENE HILL, Assistant
Attorney General
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Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

DECLARATION OF GEOFFREY L. GRAYBILL IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANTS' MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT

Date: April 9, 1984
Time: 10:30 a.m.

I, GEOFFREY L. GRAYBILL, declare as follows:

1. I am an attorney licensed to practice law in the State of California, a member of the bar of this Court, and as a Deputy Attorney General of the State of California am a counsel of record for most of the defendants herein.

2. Appended hereto as Exhibit A is a true and correct copy of a letter dated March 19, 1984, which I wrote and caused to be mailed to plaintiffs' counsel of record on the date of the letter. The letter requests information in the possession or under the control of plaintiffs or their counsel. The requests for information were, as stated in the letter, read by me over the telephone on March 19, 1984, to Paul Dieseth who represented to me, as he acknowledged each request, that he was writing them down.

3. As is apparent from the defendants' memorandum of points and authorities which is submitted with this declaration, the requests set forth in the letter are designed to illicit information which may constitute evidence or lead to admissible evidence which demonstrates that the views expressed by plaintiffs are contrary to the positions of their respective parties, that plaintiffs knew this prior to bringing this action, that the statutes which they challenge were enacted at the request of and/or with the active support of their parties, whether the plaintiff county central committees and State Central Committee of the Libertarian Party authorized this action to be brought in their names, the scope of the authority of such central committees pursuant to their bylaws and whether a particular faction or factions within have been advocating the relief requested by plaintiffs. All of this information is relevant to the issue of whether the First Amendment rights asserted by plaintiffs are affected by the challenged statutes, whether the relief requested would impair the First Amendment rights of persons not parties

to this action but on whose behalf plaintiffs purport to speak and whether plaintiffs have standing to invoke the jurisdiction of this Court.

4. As of the date of this declaration, none of the requested information has been received from plaintiffs or their counsel. Plaintiffs' attorneys, Mr. Chao and Mr. Dieseth, have informed me that they will be objecting to most of the requests and will not be providing most of the rest of the information within the period allowed for briefing in this case.

5. I have contacted the offices of the Democratic and Republican State Central Committees by telephone requesting information regarding the positions that the Central Committees have taken at any time on the statutes challenged in this litigation and an opportunity to review the agendas and minutes and related documents of the committees and their executive committees. The chairperson of the Democratic State Central Committee, and the Executive Director of the committee were unavailable but I did speak with the political director of the Central Committee, Kris Schwenkmeyer, on or about March 19 or 20, 1984. Ms. Schwenkmeyer informed me that a proposed resolution to join as plaintiffs in this action was presented to the Executive Committee and was rejected. I gave her my address and phone number and requested that she send me a copy of the resolution and the minutes manifesting the disposition of the resolution; she assured me that she would do so. The Democratic State Central Committee conducts its business from its Los Angeles office this year. As of the date of this declaration I have not received a copy of the resolution or the minutes.

6. In the same conversation, I requested an opportunity to review the minutes and agendas and related documents of the Central Committee for information regarding the enactment of the statutes challenged in this litigation and the party's policies regarding the subject matter. Ms. Schenkmeyer told me that she did not know where such documents were kept or whether they exist. Ms. Schwenkmeyer stated that she was not aware of any action taken by the Central Committee or the Executive Committee requesting repeal or amendment of any of the statutes in question. She stated that she would contact an employee of the central committee who might know and ask her to call me because the person was working part-time so that I could not contact her. I requested that the Executive Director return my call. As of the date of this declaration, I have not heard from anyone representing the Democratic State Central Committee.

7. On or about March 21 or 22, 1984, I contacted the offices of the Republican State Central Committee in Sacramento by telephone and asked to speak to the chairperson or the Executive Director neither of whom was available. I did speak to John Rico, the Political Director, and requested of him the same information requested of Ms. Schwenkmeyer. He informed me that the Chairperson of the State Central Committee had been contacted by some of the plaintiffs in this action and was invited to join as a plaintiff but in what capacity, i.e., as chairperson and/or on behalf of the State Central Committee, was unclear. Mr. Rico informed me that the chairperson refused to join in any capacity. Mr. Rico stated that he was unaware of any action by the State Central Committee or the Executive Committee requesting repeal or amendment of the

statutes challenged in this action. He also informed me that the records of the State Central Committee were kept in both Burbank, California, and Sacramento and that he was unaware of just what these records contained.

8. The files of the author of the legislation originally enacted what is now Elections Code section 11702 are not in the State Archives. The legislator is dead and I am informed by former members of his staff that his legislative files are in the possession of his widow in El Monte, California. Records relating to enactment of section 11702 could demonstrate the involvement of the political parties in enacting that statute.

9. I was assigned to represent defendants after the answers to plaintiffs' requests for discovery were submitted on January 27, 1984. The deputy previously assigned to the case had to take a leave of absence which required reassignment of the case in light of the status conference in this case scheduled for February 27, 1984. I have had to adjust an otherwise full caseload to handle this case. When I was informed by the court on February 27 that all motions had to be filed by March 5, 1984, I had to request extensions of time from other courts on matters pending before them in order to try to accommodate the unexpectedly tight time constraints imposed in this case.

10. Contacting witnesses, researching the law, preparing the documents and memoranda filed in this action within the unusually tight time constraints of this case has not permitted development of evidence as indicated in this memorandum which I am convinced should be in the record of this case to protect defendants' rights on

appeal if a judgment is entered against them on any of the causes of action in this action.

If called as a witness I would testify of my own knowledge as stated herein.

Executed at Sacramento, California, on March 26, 1984.

I declare under penalty of perjury that the foregoing is true and correct.

GEOFFREY L. GRAYBILL

March 19, 1984

James J. Brosnahan, Esq.
Morrison & Foerster
One Market Plaza
Spear Street Tower
San Francisco, California 49105

San Francisco County Democratic Central Comm., et al. *v. March Fong Eu*, et al., U.S. District Court for *Northern District of California, No. C 83-5599 MHP*

Dear Mr. Brosnahan:

Pursuant to the instructions of the court and the assurances of cooperation by your co-counsel at the status conference conducted by the court for this action on February 27, 1984, defendants make the following informal requests for discovery due to the unusually tight time constraints within which the motions for dismissal and summary judgment now pending before the court were required to have been filed and heard. These requests were transmitted by telephone to your associate Paul Dieseth on March 19, 1984.

1. Minutes or other documentation reflecting the votes of the members of the plaintiff county central committees authorizing the instant litigation and each cause of action thereof. State whether all votes were cast in person at a meeting of the committee and, if not, a detailed description of how such vote was taken.

2. If no such documentation exists, a sworn statement on personal knowledge of how authority to sue was attained from each plaintiff county central committee.

3. Roster with names, home addresses and phone numbers of each member of each plaintiff county central committee.

4. Copies of by-laws and other written statements of procedure and policy of each plaintiff county central committee.

5. Copies of the current constitution, charter, by-laws and rules of the national Republican, Democratic and Libertarian parties in the possession or under the control of any plaintiff.

6. Copies of the current constitution, charter, by-laws and rules of the California Republican, Democratic and Libertarian parties in the possession or under the control of any plaintiff.

7. Copies of any written communications within the past five years from any national or state central committee of the Republican, Democratic and Libertarian parties or officials thereof regarding matters complained of in this litigation in the possession or under the control of any plaintiff.

8. Copies of all written communications within the past five years from all plaintiffs to the national committees, California state central committees and officials thereof of the Democratic, Republican and Libertarian parties regarding matters complained of in this litigation.

9. All of the information and documentation identified in requests 1, 2 and 3 above with respect to the plaintiff state Central Committee of the Libertarian Party of California.

10. All written communications in the past five years received by any plaintiff from organizations or groups or officers or employees thereof or sent by any plaintiff to such entities or persons regarding the issues raised in this litigation.

Defendants request that complete responses to the foregoing requests, with copies of the indicated communications, be provided in writing at the office of the undersigned if at all possible no later than Friday, March 23, 1984. As you pointed out to Judge Patel on March 12, when you opposed defendants' application for an extension of time to properly respond to plaintiffs' motion for summary judgment, plaintiffs and their counsel did not file the complaint in this action until November 17, 1983, and the first amended complaint until on or about December 5, 1983, because the process of preparing plaintiffs' case was time-consuming and laborious. Having taken so much time and care in preparing your case, it is reasonable to assume that the requested information is already in your possession or is readily available.

Unlike plaintiffs, defendants have been under tight time constraints from the beginning of this litigation in responding to the complaint, to plaintiffs' requests for discovery and now to plaintiffs' voluminous motion for summary judgment. Thus, defendants have been deprived of the time necessary to adequately research and understand the context in which the issues of this litigation are raised, to prepare for trial or to prepare a fair record if this matter is determined through summary procedures. Defendants have not been involved in monitoring the activities of the political parties in California because their duties have not included this function. This fact is a basis for defendants' motion to dismiss. This fact also makes defendants dependent on the knowledge and record of persons outside of government to adequately defend against the issues raised by the complaint if, as appears to be a *fait accompli*, defendants are required to respond on the merits.

Defendants' counsel have devoted and are continuing to devote intensive efforts to the laborious and time-consuming process of identifying the persons outside of government who have the necessary knowledge and who are willing to provide information without the compulsion of judicial process which the court has acknowledged is not a practical alternative given the time-constraints involved in this litigation. The leads and information which defendants' counsel have acquired to date, though tentative and preliminary, indicate that the views expressed by plaintiffs are not representative of most members of their parties, are contrary to the actual positions of their parties and are deleterious to the interests of their parties.

This information if adequately developed and validated would have profound adverse effects both on plaintiffs' standing to litigate any of the issues raised by the complaint and on plaintiffs' positions on the merits of these issues.

Inasmuch as the court has made a point of informing defendants that they have no assurance that they will have an opportunity to present evidence for introduction into the record of this litigation after final briefing of the pending motions are filed by mail on April 2, 1984, your timely response to defendants' request is of critical importance. Defendants have endeavored to get the information of the nature requested of you themselves but so far have been unable to secure almost all of it. Obviously, these requests are of necessity of a preliminary nature and in order for

defendants to prepare a fair record in this litigation, much follow-up would be required.

Very truly yours,
JOHN K. VAN DE KAMP
Attorney General

Geoffrey L. Graybill
Deputy Attorney General

GLG/lac

cc: Honorable Marilyn Hall Patel, Judge
U.S. District Court

Clerk, U.S. District Court for
the Northern District of California

bcc: Philip Hickok, Deputy County Counsel, L.A.
Arlo Smith, D.A., San Francisco
Leo Himmelsback, D.A., Santa Clara County
Jack Shelley, D.A., Placer County

JOHN K. VAN DE KAMP, Attorney General
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Attorneys for Defendants
MARCH FONG EU

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

DECLARATION OF MICHAEL E. NAIL IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

(Filed April 3, 1984)

Date: April 9, 1984
Time: 10:30 a.m.

I, MICHAEL E. NAIL, declare as follows:

1. I have been District Attorney for Solano County, California, since December 31, 1982.

2. Prior to becoming District Attorney, I was employed continuously since Septmber 1, 1967, as a trial attorney or supervising trial attorney in the office of the District Attorney for Solano County.

3. During the time that I have been District Attorney or a trial attorney or supervising trial attorney in the office of the District Attorney for Solano County I have not been involved in, nor am I aware of the office having brought any enforcement action with regard to endorsements of candidates for the nomination of the party in a primary election or for nonpartisan office by state party conventions, state party central committees or county party central committees, or members thereof or with regard to the organization, operations or procedures of such organizations. If such enforcement actions had been taken I would have been aware of them.

4. In my opinion, violations of Elections Code section 11702 or of the provisions of the Elections Code regarding the organization, operations and procedure set out in the third cause of action of the First Amended Complaint in this action and endorsement by state party conventions, state party central committees or county party central committees of candidates for nonpartisan office do not constitute criminal offenses defined by any provision of the Elections Code.

If called as a witness I would testify of my personal knowledge as stated herein.

Executed at Fairfield, California, on April 2, 1984.

I declare under penalty of perjury that the statements herein are true and correct.

/s/ Michael E. Nail

JOHN K. VAN DE KAMP, Attorney General
of the State of California
THOMAS E. WARRINER
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiff,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

DECLARATION OF JOHN J. MEEHAN IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

(Filed April 3, 1984)

I, JOHN J. MEEHAN, declare as follows:

1. I have been District Attorney for Alameda County, California since April 1981.

2. I joined the Office of the District Attorney for Alameda County as an attorney in October, 1960, and was employed as an attorney in that office continuously until I became District Attorney in April 1981.

3. During the time that I have been District Attorney or a Deputy or an Assistant District Attorney for Alameda County I have not been involved in, nor am I aware of the office having brought any enforcement action with regard to endorsement of candidates for the nomination of the party in a primary election or for nonpartisan office by state party conventions, state party central committees or county party central committees or members thereof or with regard to the organization, operations or procedures of such organizations. If such enforcement actions had been taken I would have been aware of them.

4. In my opinion, violations of Elections Code section 11702 or of the provisions of the Elections Code regarding the organization, operations and procedures set out in the third cause of action of the First Amended Complaint in this action and endorsement by state party conventions, state party central committees or county party central committees of candidates for non-partisan office do not constitute criminal offenses defined by any provision of the Elections Code.

If called as a witness I would testify of my personal knowledge as stated herein.

Executed at Oakland, California on April 2, 1984.

I declare under penalty of perjury that the statements herein are true and correct.

/s/ John J. Meehan

JOHN K. VAN DE KAMP, Attorney General
of the State of California
N. EUGENE HILL
Assistant Attorney General
GEOFFREY L. GRAYBILL
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Attorneys for Defendants MARCH
FONG EU

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC
CENTRAL COMMITTEE et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State
of the State of California, et al.,

Defendants.

DECLARATION OF JACK E. SHELLEY IN
SUPPORT OF DEFENDANTS' MOTION TO
DISMISS AND FOR SUMMARY JUDGMENT

(Filed April 3, 1984)

Date: April 9, 1984
Time: 10:30 a.m.

I, JACK E. SHELLEY, declare as follows:

1. I have been District Attorney for Placer County, California, since January 1983.

2. From November 1973 through January 1983, when I became District Attorney, I was a senior trial lawyer in the office of the Placer County District Attorney.

3. From 1963 through 1970 I was a Deputy District Attorney in the office of the District Attorney of Alameda County as well as a felony inspector.

4. During the time I have been District Attorney or a Deputy District Attorney, I have not been involved in, nor am I aware of, either of the offices of district attorney which I have been associated with, having brought any enforcement action with regard to endorsements of candidates for the nomination of the party in a primary election or for nonpartisan office by state party conventions, state party central committees or county party central committees or members thereof or with regard to the organization, operations or procedures of such organizations. If such enforcement actions had been taken I would have been aware of them.

5. In my opinion, violations of Elections Code section 11702 or of the provisions of the Elections Code regarding the organization, operations and procedure set out in the third cause of action of the First Amended Complaint in this action and endorsement by state party conventions, state party central committees or county party central committees of candidates for nonpartisan office do not constitute criminal offenses defined by any provision of the Elections Code.

If called as a witness I would testify of my persona knowledge as stated herein.

Executed at Auburn, California, on March 30, 1984.

I declare under penalty of perjury that the statements herein are true and correct.

/s/ Jack E. Shelley

JOHN K. VAN DE KAMP, Attorney General
of the State of California
N. EUGENE HILL
Assistant Attorney General
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FONG EU

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE et al.,

Plaintiffs.

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

DECLARATION OF LEO HIMMELSBACH IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

Date: April 9, 1984
Time: 10:30 a.m.

(Filed April 3, 1984)

I, LEO HIMMELSBACH, declare as follows:

1. I have been District Attorney of Santa Clara County, California, since January 1983.

2. Prior to becoming District Attorney, I served as a Deputy or Assistant District Attorney for Santa Clara County continuously since December 1961.

3. During the time that I have been District Attorney or a Deputy or an Assistant District Attorney for Santa Clara County I have not been involved in, nor am I aware of the office having brought any enforcement action with regard to endorsements of candidates for the nomination of the party in a primary election or for nonpartisan office by state party conventions, state party central committees or county party central committees or members thereof or with regard to the organization, operations or procedures of such organizations. If such enforcement actions had been taken I would have been aware of them.

4. In my opinion, violations of Elections Code section 11702 or of the provisions of the Elections Code regarding the organization, operations and procedure set out in the third cause of action of the First Amended Complaint in this action and endorsement by state party conventions, state party central committees or county party central committees of candidates for nonpartisan office do not constitute criminal offenses defined by any provision of the Elections Code.

If called as a witness I would testify of my personal knowledge as stated herein.

Executed at San Jose, California, on April 2, 1984.

I declare under penalty of perjury that the statements herein are true and correct.

/s/ Leo Himmelsbach

JOHN K. VAN DE KAMP, Attorney General
of the State of California
N. EUGENE HILL
Assistant Attorney General
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Deputy Attorney General
1515 K Street, Suite 511
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MARCH FONG EU, et al.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE et al.

Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

DECLARATION OF WILLIAM A. O'MALLEY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

Date: April 9, 1984
Time: 10:30 a.m.

(Filed April 3, 1984)

I, WILLIAM A. O'MALLEY, declare as follows:

1. I have been District Attorney for Contra Costa County, California, continuously since August 19, 1969.

2. Prior to becoming District Attorney, I was a Deputy District Attorney for Contra Costa County from February 18, 1963, through September 4, 1964, and from May 17, 1965, through November 21, 1966.

3. During the time that I have been District Attorney or a Deputy District Attorney for Contra Costa County I have not been involved in, nor am I aware of the office having brought any enforcement action with regard to endorsements of candidates for the nomination of the party in a primary election or for nonpartisan office by state party conventions, state party central committees or county party central committees or members thereof or with regard to the organization, operations or procedures of such organizations. If such enforcement actions had been taken, I would have been aware of them.

4. In my opinion, violations of Elections Code section 11702 or of the provisions of the Elections Code regarding the organization, operations and procedure set out in the third cause of action of the First Amended Complaint in this action and endorsement by state party conventions, state party central committees or county party central committees of candidates for nonpartisan office do not constitute criminal offenses defined by any provision of the Elections Code.

If called as a witness, I would testify of my personal knowledge as stated herein.

Executed at Pacific Grove, California, on April 2, 1984.

I declare under penalty of perjury that the statements herein are true and correct.

/s/ William A. O'Malley

JOHN K. VAN DE KAMP, Attorney General
of the State of California
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NO. C-83-5599 MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

DECLARATION OF ROBERT PODESTA IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

Date: April 9, 1984
Time: 10:30 a.m.

(Filed April 6, 1984)

I, ROBERT PODESTA, declare as follows:

1. I have been employed as an attorney by the Office of the District Attorney for the City and County of San Francisco continuously since January, 1964. In September of 1982 I was appointed Chief Assistant District Attorney for the City and County of San Francisco.

2. During the time that I have been employed by the Office of District Attorney, I have not been involved in, nor am I aware of the office having brought any enforcement action with regard to endorsements of candidates for the nomination of the party in a primary election or for nonpartisan office by state party conventions, state party central committees or county party central committees or members thereof or with regard to the organization, operations or procedures of such organizations. If such enforcement actions had been taken I would have been aware of them.

3. The office of the District Attorney for the City and County of San Francisco does not consider violations of Elections Code section 11702 or of the provisions of the Elections Code regarding the organization, operations and procedure set out in the third cause of action of the First Amended Complaint in this action and endorsement by state party conventions, state party central committees or county party central committees of candidates for nonpartisan office to constitute criminal offenses defined by any provision of the Elections Code.

If called as a witness I would testify of my personal knowledge as stated herein.

Executed at San Francisco, California, on April 4, 1984.

I declare under penalty of perjury that the statements herein are true and correct.

/s/ Robert Podesta

DE WITT W. CLINTON, County Counsel
PHILIP H. HICKOK, Deputy County Counsel
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(213) 974-1821
Attorneys for Robert Philibosian, District Attorney, County of Los Angeles

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of the State of California; et al.,

Defendants.

DECLARATION OF CURT LIVESAY

I, CURT LIVESAY, declare as follows:

1. I currently hold the position of Director, Central Operations in the Office of the Los Angeles County District Attorney. Prior to this I held the position of Chief Deputy from 1979-1983.

2. I have been an attorney in the District Attorney's Office for the past 18 years.

3. During the time that I have been in the office of the District Attorney for Los Angeles County I have not been involved in, nor am I aware of the office having brought any enforcement action with regard to the endorsement, support or opposition of candidates for the nomination of any political party in a primary election or for nonpartisan offices by state party conventions, state party central committees or county party central committees or any member thereof or with regard to the organization, operation or procedure of any such organization. I have consulted with several other attorneys of this office who would be likely to know if the office had taken enforcement action with respect to this activity and none of them is aware of any such action having been taken. If such enforcement actions had been taken I or such individuals would have been aware of them.

4. In the opinion of this office, violations of Elections Code section 11702 or of the provisions of the Elections Code regarding the organization, operation or procedure set out in the third cause of action of the First Amended Complaint in this action or endorsement by state party conventions, state party central committees or county party central committees of candidates for nonpartisan office do not constitute criminal offenses defined by any provision of the Elections Code.

If called as a witness I would testify of my personal knowledge as stated herein.

Executed at Los Angeles, California, on April 6, 1984.

I declare under penalty of perjury that the statements herein are true and correct.

/s/ Curt Livesay

Opinion No. 54-29—March 9, 1954

SUBJECT: POLITICAL PARTIES—County Central Committee of, may not endorse or support one of several candidates of the party in pre-primary campaign for nomination.

Requested by: ASSEMBLYMAN, 19th DISTRICT.

Opinion by: EDMUND G. BROWN, Attorney General. Leonard M. Friedman, Deputy.

Honorable Charles W. Meyers, Member of the Assembly, has presented the following question:

May the county central committee of a political party lawfully endorse a candidate prior to the primary election?

The conclusion is summarized as follows:

A county central committee, as an entity, may not lawfully endorse or support one of several candidates of the same party who oppose each other in the pre-primary campaign.

ANALYSIS

The question is as to the legality of pre-primary endorsements by county central committees of the various political parties. Before the primary may such a committee—in its offical capacity as a lawfully constituted party organ—endorse one of several contending candidates for its party's nomination? By the same token, may the committee support that candidate's primary election campaign? Conversely, are the committee's campaign efforts limited to furthering the general election campaign of those candidates of its party who have previously been nominated at the primary?

In exploring these questions we consider only the scope of the committee's actions as an entity. We are not concerned with the activities of the committee members as individual citizens or as members of unofficial party organizations. Nor do we discuss what legal remedies are available to correct improper committee action. Suffice it to say here that there are certain party obligations with which the courts do not meddle and which are left to internal correction within the party (*Sharboro v. Jordan* (1912), 164 Cal. 51; *Hutchinson v. Brown* (1898), 122 Cal. 189; see also 169 A.L.R. 1281).

Our election laws offer no obvious answer. Section 2831 of the Elections Code provides for the election of county central committees of the respective political parties in each county. In counties having twenty or more assembly districts (i.e., Los Angeles County) the county committees are elected every four years at the presidential primary. In all other counties, the election occurs at the direct primary every two years. Section 2831 states: " . . . The county central committee shall have charge of the party campaign under general direction of the State central committee or of the executive committee selected by the State central committee."

Section 2832 of the Code provides that the county committees "shall perform such other duties and services for their respective political parties as seem to be for the benefit of each party." It also declares that county committees shall function and exist from one primary election until the next.

Before the establishment of the direct primary system political parties were regarded as voluntary associa-

tions and their committees as the executive organs of these associations. At that time state and county central committees were governed primarily by party custom and usage (see *Spelling v. Brown* (1898), 122 Cal. 277; *Hutchinson v. Brown,* supra, 122 Cal. 189). The advent of direct primary laws entailed statutory recognition of political party organs and an increasing degree of statutory regulation. To a certain extent, not yet completely delineated by the courts, party committees have taken on limited public attributes (*Katz v. Fitzgerald* (1907), 152 Cal. 433). On several occasions the Federal Supreme Court has identified the action of party committees with "state" action for the purposes of the Fifteenth Amendment (*Smith v. Allwright* (1943), 321 U.S. 649; *Nixon v. Condon* (1932), 286 U.S. 73; *Nixon v. Herndon* (1927), 273 U.S. 536).

Nevertheless the laws regulating political parties do not make them agencies of the government (see *Harrell v. Sullivan* (Ind., 1942), 40 N.E. 2d 115). California party committees are no more public agencies than were their counterparts in the pre-primary era. Nor have their members become public officers. In defining the scope of committee activities in California, the problem is not to find an express delegation. As party organs these committees still possess the powers conferred upon them by party usage and of which the law has not deprived them.

That California party practices have ever sanctioned "official" pre-convention or pre-primary slates is a matter of extreme doubt. In 1896 Chief Justice Beatty described the role of the party central committees as

follows: ". . . according to universal party usage in California, the central or executive committee of a party has no function after one [general] election is over, except to preserve the organization and take the necessary preliminary steps for the assembling of the next convention.

"It has no right to forestall or in any manner limit or curtail the powers of the convention which it calls. The convention, when assembled, is the depositary of all party power, and so continues until it adjourns, after which a new committee comes into power for the mere purpose of conserving the party interests pending the elections, and of doing thereafter such things as may be provisionally necessary to keep the regular organization and call another convention. . . ." (*Hutchinson v. Brown,* supra, 122 Cal. at 193).

This description was echoed a half century later by another observer: "Custom and usage indicate that the function of party central committees is the general election, not the primary" (Farrelly and Hinderaker, *The Politics of California*, p. 91).

Mr. Justice Beatty's description indicates that in the convention era the central committee's basic function was to accept and campaign for the convention's nominees. Party usage apparently did not permit the committee to anticipate the convention's choice by presenting it with an "official" pre-convention slate or to use party funds to push one of several pre-convention aspirants. It would be naive to suppose that the central committees of those days meticulously refrained from attempts to steer the conventions. What such a committee might do as a group of individuals or an unofficial caucus is one thing. What

it might do as a representative party organ, taking official action at an official meeting, is another. Such limitations as existed applied to the committee solely in its official, representative character.

In 1909 the direct primary system substituted state-operated party elections for the former conventions. Although the basic elements of the system were established by the act of 1909, our present direct primary law is a codification of the Primary Election Act of 1913. The 1913 law installed cross-filing as a feature of the California primaries. The rigid test of party allegiance imposed by the former law was replaced by a provision allowing candidates to offer themselves for the nomination of more than one party (Calif. Stats. 1913, ch. 690, p. 1389). The 1913 law also eliminated the system by which county central committees were selected at party conventions held in the counties after the primary. County committees were to be elected directly by the voters at the primary elections. Such committees were to "have charge of the party campaign under general direction of the state central committee . . ." (Calif. Stats. 1913, ch. 690, p. 1407).

The 1913 law carried statutory recognition of these committees only between the primary election and the culmination of "the party campaign" at the general election. Statutory recognition ceased with the general election.

The essence of the California direct primary system as established by the 1913 law was to place the unfettered choice of each party's candidates in the hands of the

primary election voters (*Hart v. Jordan* (1914), 168 Cal. 321, 323; *Heney v. Jordan* (1918), 179 Cal. 24, 31). The election of the candidates, and even of its county central committee members, was completely withdrawn from party conventions and caucuses. If, as we believe, the central committees were prevented by established usage from placing slates of "official" candidates before the former conventions, certainly there was nothing in the 1913 law from which to infer the birth of such a practice. Central committees, as official party organs, had no more power to anticipate the voters than they did at the conventions.

The history of those times supports this belief. The 1913 law was substantially the creation of the Bull Moose or Progressive group. As insurgents from the regular Republican organization of that day, it was their aim and intent to minimize the role of the established party agencies (see *Sbarboro v. Jordon*, supra, 164 Cal. 51; *Farrelly and Hinderaker, op. cit.*, p. 76; Rowell, *The Success of the Direct Primary*, Transactions of the Commonwealth Club (1924), Vol. XIX, No. 10). They did not intend to hasten their own political demise by establishing any legally-sanctioned usage through which the existing, unfriendly party committees might endorse hostile candidates before the primary.

Not only is there an apparent absence of any established usage sanctioning pre-primary endorsements, in our view the 1913 law impliedly prohibited the practice, and the present law preserves that prohibition. Lacking any express recognition of the central committee's existence before the primary, the 1913 law carried no express

curb on their pre-primary activities. There was an implied restriction, however. The 1913 law placed the committee in "charge of the party's campaign." What was this party campaign? The committee had statutory existence only between the primary and the general elections. Hence the campaign mentioned by the statute could be nothing other than the campaign preceding the general election.

Implicit in the mandate to take charge of the general election campaign was a prohibition against any committee action which might bar it from fulfilling its statutory mission. Up to the primary there was no party campaign. There were only individual contenders for the party's nomination. The campaign for one of several primary election contenders within the same party could not be a party campaign. It could be only a campaign for a particular individual, group or faction within the party. The direction to conduct a campaign *for* the party impliedly prohibited the central committee from conducting a campaign *within* the party.

We expressed similar views recently, when we concluded that a state central committee could not promote the election of a picked slate in the presidential primary (19 Ops. Cal. Atty. Gen. 12). We stated: "Statutory authority to conduct party campaigns for party candidates necessarily excludes committee intervention among several contending primary election candidates or groups of candidates within the party. In the very nature of things such intervention can only render the committee impotent to fulfill the very duties which section 2829 [of the Elections Code] imposes upon it. Intervention on

behalf of an unsuccessful primary election candidate can only result in a loss of mutual support and cooperation as between the committee, on the one hand, and the successful candidate and his adherents, on the other. Rather than turn to the committee which opposed him before the primary, the party's candidate will turn elsewhere for support. Party factionalism and strife are engendered. The state committee, which the law has placed at the very helm of the party's general election campaign, is thus prevented by its own action from fulfilling its statutory function of party leadership. We do not mean to editoralize; we wish only to point out that the statutory duty of party leadership prohibits, by necessary implication, pre-primary support by the state central committee of one of several contending candidates or factions within the party."

These particular provisions of the 1913 law remained unchanged until 1937. That year the statutes were amended to give the county committees statutory recognition as continuing bodies from one primary election to the next. The 1937 amendment also gave expression to committee functions not previously stated in the law: "Such county central committees shall perform such other duties and services for their respective political parties as seem to be for the benefit of each party" (Calif. Stats. 1937, ch. 407, p. 1366).

Certainly the 1937 amendment was a distinct legislative recognition of committee existence and committee activity preceding the primary. In a letter to the Secretary of the Democratic County Central Committee of San Diego the then Attorney General (1947) expressed the

view that a county committee may support a candidate before the primary where he has no opposition in his own party, for example, where he is opposed only by a cross-filing candidate affiliated with another party (Letter dated November 20, 1947, LB 263-101a). That view was based upon the language of the 1937 amendment, which sanctioned committee activity "for the benefit of each party." Where, however, several candidates of the same party are contending for the party's primary election nomination, then the committee's endorsement is not for the benefit of the party. Instead, it is aimed at benefiting an individual or group within the party. We do not believe that the 1937 amendment was intended to lift the general restriction on pre-primary endorsements.

In 1939 these provisions were codified as sections 2831 and 2832 of the Elections Code. The present law preserves the implied prohibition which bars county central committees from endorsing or supporting competing candidates of the same party before the primary election.

This opinion merely confirms a belief which is widely shared among many of the county central committees of the State. Their real or supposed inability to intervene before the primary has encouraged the growth of unofficial, extra-statutory party assemblages. Some students of the elective process have advocated the "Hughes plan," which lends statutory sanction to pre-primary endorsements (see, Merriam and Overacker, Primary Elections, pp. 214-216; Harris, A Model Direct Primary Election System, State Government, May, 1951, pp. 135-138). If the present situation creates any public disadvantage, the solution must lie with the Legislature.

EXHIBIT 2

CALIFORNIA
Democratic
Party

BY-LAWS & RULES OF THE CALIFORNIA DEMOCRATIC PARTY

PREPARED FOR THE
EXECUTIVE BOARD MEETING
APRIL 29-30, 1983
LOS ANGELES, CA

PETER KELLY
CHAIR

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BY-LAWS OF THE DEMOCRATIC STATE CENTRAL COMMITTEE OF CALIFORNIA

ARTICLE I

NAME AND PURPOSE

Section 1. NAME

The name of this organization shall be the STATE CENTRAL COMMITTEE OF THE CALIFORNIA DEMOCRATIC PARTY.

Section 2. PURPOSE

a. These By-Laws shall govern the organization, operation, and functions of that political party known as the California Democratic Party (the Party).

b. This Committee shall elect state officers of the Party and Democratic National Committee members, shall adopt a state party platform in gubernatorial years and may adopt a proposed national platform in presidential election years, shall conduct campaigns for the party and its candidates for public office, shall appoint committees and employ staff as deemed desirable, and shall conduct such other business as the policy and program of the Party may require.

Section 3 SECTIONS

a. The Southern Section shall be comprised of the Counties of Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura.

b. The Northern Section shall be comprised of the remaining Counties in the State.

ARTICLE II

MEMBERSHIP

Section 1. MEMBERSHIP

a. This Committee shall consist of:

(1) One member for each elective public office named in Section 2(a) of this Article.

(2) Members appointed pursuant to Section 3 of this Article.

(3) Members elected by County Central Committees of the Party pursuant to Section 4 of this Article.

(4) Members elected by Assembly District caucuses pursuant to Section 5 of this Article.

(5) National Committee persons of the Party.

(6) The immediate past state officers of This Committee.

(7) The President of the California Democratic Council and of the California Federation of Young Democrats.

b. Membership shall terminate, subject to renewal, every two years and shall extend from the convening of the regular meeting of This Committee in January of the odd numbered year to the convening of the regular meeting held in the next odd numbered year, with vacancies occurring during this period filled in accordance with the provisions of Section 9 of this Article.

c. There shall be no dual memberships. A member who becomes eligible for for membership on some other grounds during his or her two-year term shall inform the Secretary of State and State Chair of the eligibility and identify the position which he or she wishes to represent.

Section 2. PUBLIC OFFICE MEMBERS

a. For purposes of this Section, the following public offices shall be referenced:

(1) Governor

(2) Lieutenant Governor

(3) Treasurer

(4) Controller

(5) Attorney General

(6) Secretary of State

(7) Members of the State Board of Equalization

(8) Members of the State Legislature

(9) Members of the United States Senate and the House of Representatives from California.

b. Any Democrat who was elected or otherwise designated to hold an office named in subdivision (a) of the section and whose term of office extends beyond January of the next odd-numbered year shall be a member of This Committee for the two-year period commencing in January of that year.

c. Any Democrat who is elected or otherwise designated to hold an office named in subdivision (a) of this section during the two-year period commencing in January of an odd-numbered year shall become a member of This Committee upon such election or designation for the remainder of the two-year period.

d. In the case of an office named in subdivision (a) of this section to which a Democrat has not been selected at the most recent primary election in which a nomination for that office was made the holdover nominee shall be a member of This Committee during the two-year period commencing in January of an odd-numbered year or until such time during that period that a Democrat is elected or designated to hold that office.

e. In the case of an office named in subdivision (a) of that section for which subdivisions (b), (c), and (d) are all inapplicable, one member shall be appointed as follows:

(1) If a state legislative office is involved, by appointment of a voter who resides in the district in question by the County Central Committee of the Party in which the district is situated (if the district is situated wholly within a single county), or in which the disqualified, deceased or resigned member resided (if the vacancy occurs in a district comprising two or more counties and is caused by disqualification or death). or in which the Republican legislator or the most recent Republican nominee for the office in question resides (if the vacancy occurs in a district comprising two or more counties and is not caused by disqualification or death).

(2) If the office of the U.S. Senate or any of the state-wide offices named in subdivision (a) of this section is

involved, by appointment by the Executive Board of This Committee.

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(3) If the office of a member of the U.S. House of Representatives is involved, by appointment by the Executive Board of This Committee of a voter who resides within the Congressional District to be represented.

f. Any member of This Committee whose membership is held pursuant to subdivision (b), (c), or (d) of this section shall be known as a "Public Office Member".

Section 3. APPOINTED MEMBERS

a. Each member identified in Section 2(b) or 2(c) of this Article shall be entitled to appoint six members, at least three of who shall be of the opposite sex; except that nominee-members for Congress and the State Assembly shall be entitled to appoint five members, at least three of whom shall be of the opposite sex.

b. Each member identified in Section 2(d) or 2(e) of this Article shall be entitled to appoint three members, at least two of whom shall be of the opposite sex; except that nominee-members for Congress and the State Assembly shall appoint two members, at least one of whom shall be of the opposite sex.

c. Appointment of members to This Committee shall be made in writing in the form prescribed in Section 8660.2 of the California Elections Code signed by the appointing member and delivered to the Secretary of the State, with copies

delivered to the State Chair of the Party. Both such deliveries shall be made no later than 5 PM of the First Monday following the regular statewide general election.

Section 4. MEMBERS ELECTED BY COUNTY CENTRAL COMMITTEES

a. Each County Central Committee of the Party shall elect members to This Committee as follows: two members for the first 5,000 registered Democrats resident in the county and one member for each 25,000 Democrats or portion thereof over 5,000.

b. The number of registered Democrats shall be as of the most recent report of registration to the Secretary of State. The Secretary of the State Committee shall secure the registration totals received by the Secretary of State, 30 days prior to the General Election, and shall forthwith notify the respective County and District Committees of the Party registrations and the allocation of members to be elected under provisions of the Election Code. These totals may be updated on the basis of registration increases received by the Secretary of State seven days prior to the General Election.

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c. Elections shall be held within 35 days following the regular general statewide election.

d. Persons elected as members shall be divided as equally as possible between men and women and shall be members of the

County Central Committee as of the date of the first regular meeting of This Committee.

e. By no later than January 1 of an odd-numbered year, the County Chair shall notify the State Chair of the Party and the Secretary of the State in writing signed by him or her of the names and addresses of the persons elected to membership of This Committee.

f. County Central Committees may provide for the election of their allocation of membership on an at-large basis or by Supervisorial or Assembly Districts.

Section 5. MEMBERS ELECTED BY ASSEMBLY DISTRICT CAUCUSES

a. Each Assembly District caucus, as provided in Articles VI and VII of these By-Laws, shall elect five members to This Committee who are registered Democrats resident in the district.

b. The Assembly District caucus shall be held on the first Sunday in December following the General Election to be publicized throughout the State as Democratic Caucus Day. In the event of some major logistical problem, the caucus in a particular Assembly District may alternately be held the third Sunday in December, upon request to the State Chair. The State Chair will also call a district caucus in the third Sunday in December for any Assembly District where no action had been reported.

c. Each Assembly caucus shall elect one alternate for each member of This Committee elected. Alternates shall fill vacancies with a person of the same sex in the order based upon the number of votes received in a caucus.

d. Persons elected as members and as alnates shall be equally divided as possible between men and women.

e. Within five days following the Assembly District caucus, the persons calling the caucus shall notify the State Chair of the Party and the Secretary of State in writing signed by him or her of the names and addresses of the persons elected to membership on This Committee and their alternates.

Section 6. NOTIFICATION OF APPOINTMENT OR ELECTION

a. The Chair of This Committee shall notify each person appointed or elected as a member of This Committee:

(1) That he or she is a member of This Committee;

(2) Of the date, time and place of the first regular meeting of This Committee;

(3) That the meeting may be attended either in person or by proxy;

(4) That every proxy shall be filed in office of the Secretary of State and/or the State Chair no later than 5 PM of the day preceding the meeting of This Committee;

(5) The proxy shall be in writing signed by the member under penalty of perjury.

b. The Chair of This Committee shall enclose, with each notification of appointment or election one copy of the proxy form sent to the member by the Secretary of State.

c. The Chair of This Committee shall provide all members with appropriate notices and forms of proxy prior to each special meeting of This Committee.

d. The Chair of This Committee shall provide all alternates with appropriate notices prior to each meeting of This Committee.

Section 7. QUALIFICATION FOR MEMBERSHIP

A person is eligible for membership on This Committee only if such person is registered as affiliated with the Party at the time of election.

Section 8. REMOVAL FROM MEMBERSHIP

a. This Committee may remove any member if, during his/her term of membership, such member affiliates with or registers as a member of another party, publicly avows preference for another party, publicly advocates that the voters should not vote for the nominee of the Party for any office, or who publicly gives support to or avows a preference for a candidate of another party or a candidate who is opposed to a candidate nominated by the Party, or fails to pay the prescribed dues as provided in Section II of this Article.

b. Removal of a member may be effected in the following manner:

(1) At least two members of the Executive Board must sign and submit to the Secretary of This Committee a written statement of charges containing the grounds for removal.

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(2) The Secretary of This Committee, upon receipt of the statement of charges, must send to the accused member by timely registered mail, a copy of the statement of charges and a letter stating: that the accused member may either resign or have a hearing before the officers of This Committee, named in Article III, Section 2; that at such hearing, the accused member shall be afforded an opportunity to respond to the statement of charges and to confront the witnesses against such member; and that such member may be represented by counsel at such hearing.

(3) If the accused member does not resign, the Secretary of This Committee shall send a copy of the statement of charges to all officers of This Committee along with a notice of the hearing date.

(4) At the hearing the officers shall examine the statement of charges brought against the accused member. The accused member shall be afforded an opportunity to respond to the charges, to confront any witnesses against such members, and may be represented by counsel if desired. Such hearing shall be concluded in such fashion as to afford the accused

member due process of law. After such hearing, upon motion for removal, the accused member may be removed by a vote of not less than two-thirds of the officers present and voting.

Section 9. VACANCIES

a. A vacancy of This Committee shall be deemed to exist in the event of the appointment or election to membership of an ineligible person or whenever any member dies, resigns, becomes incapacitated to act, is removed from membership pursuant to Section 8 of this Article, ceases to be a California resident, assumes membership through another means, or ceases to be a member of the Party.

b. Vacancies shall be filled as follows:

(1) Should a member appointed to membership pursuant to Section 3 of this Article ceases to be a member for any reason specified in subdivision (a) of this Section, the vacancy shall be filled not less than three days preceding the next meeting of This Committee. The appointing member shall notify in writing the Secretary of State and the State Chair of the Party of all appointments made pursuant to this subdivision. If the original appointing person is no longer a member of This Committee or does not wish to fill the vanacy, the State Chair of This Committee shall do so and shall notify in writing the Secretary of State of the appointment made.

(2) Should a member elected to membership by a County Central Committee cease to be a member for any reason specified in subdivision (a) of this Section, notice shall be given to the County Central Committee by This Committee as soon as possible after occurance of the vacancy, and the County Central Committee shall fill the vacancy at its next meeting following the notification. The County Committee Chair shall notify in writing the Secretary of State and State Chair of the Party of the election held pursuant to this subdivision.

(3) Should a member elected to membership by an Assembly District caucus cease to be a member for any reason specified in subdivision (a) of the Section, the resulting vacancy shall be filled by the alternate who was elected for that purpose. In the event a vacancy develops for which there is no alternate, at the earliest convenience the person who called the regular biennial Assembly District caucus pursuant to Article VII, Section 1 of these By-Laws shall call a meeting of the Assembly District executive committee which shall fill the vacancy. Such person shall notify in writing the Secretary of State and the State Chair of the Party of the selection made pursuant to this subdivision.

Section 10. ASSOCIATE MEMBERS AND ALTERNATES

Associate and Alternate members of This Committee shall have the same privileges and obligations of a regular member but shall not be able to vote.

Section 11. DUES

a. Dues shall be paid by This Committee's members and the time and manner by which such dues shall be paid shall be established at the Executive Board prior to the next meeting of This Committee. Dues may also be prescribed for alternates and associate members.

b. Any member who fails to pay the prescribed dues may be removed from This Committee in the manner prescribed in Section 8 of the Article, except that payment of dues shall not be obligatory for any member to whom it constitutes an economic hardship.

c. The name of any elected or appointed member, alternate, or associate member who, without cause, fails to pay the prescribed dues shall be forwarded to the appointing member or to the chair of the electing body before the initiation of removal proceedings.

ARTICLE III
OFFICERS

Section 1. STATE OFFICERS

a. The state officers of this organization shall be a State Chair; a State Vice-Chair; a State Treasurer; a Northern Section

Chair; a Northern Section Vice-Chair; a Northern Section Secretary; a Northern Section Controller; a Southern Section Chair; a Southern Section Vice-Chair; a Southern Section Secretary; a Southern Section Controller.

b. The State Chair and the State Vice Chair shall change by sections of residence each biennium and shall be from the same section.

c. The Vice Chairs shall be of the opposite sex from the respective chairs.

Section 2. DESCRIPTION OF DUTIES

a. The *State Chair* shall be the chief executive officer and the official voice of This Committee, shall carry out the policies of This Committee, its Executive Board, and its Steering Committee, and shall carry into effect the purposes of This Committee.

b. The *State Vice Chair* shall assist the State Chair in the performance of the duties of that office. In the event of the absence of the State Chair or a vacancy in that office, the Vice Chair shall exercise all powers of the State Chair.

c. The *State Treasurer* shall be appointed by the State Chair and such appointment shall be subject to confirmation by the State Executive Board. The State Treasurer shall be a non-voting member of the State Executive Board and the State Steering Committee. The State Treasurer shall take custody of all funds directly or indirectly raised or received by this organization, shall open and maintain bank

accounts for the deposit of funds, shall make disbursements at the direction of the State Chair and shall make reports at each regular meeting of the Executive Board on receipts and disbursements, and shall comply with all state and federal reporting requirements.

d. The *Section Chairs* shall assist the State Chair in their respective sections.

The *Section Vice Chairs* shall assist the Sectional Chair of their respective sections. In the event of absence of the Section Chair, the Section Vice Chair for that section shall exercise all the power and duties of the Section Chair.

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f. *The Section Secretary* from the same section as the State Chair shall maintain all records of this organization, serve all required notices and discharge such other duties as pertain to that office. The other *Section Secretary* shall assist in the performance of such duties, and, in the absence of the Sectional Secretary from the same section as the State Chair, shall exercise the powers and duties of that officer.

g. *The Section Controllers* shall be Ex-Officio Co-Chairs of the Standing Committee on Budget and Finance, and shall assist the State Chair and Section Chairs in oversight of financial affairs of the State Committee.

Section 3. ELECTION OF OFFICERS

a. All officers, except the State Treasurer, shall be elected at the first meeting of each Democratic State Central Committee held

in January of odd-numbered years. The State Chair shall be elected on the Saturday of that meeting. All other officers shall be elected on the Sunday of that meeting.

b. The State Chair and the State Vice Chair shall be elected by the entire membership of This Committee.

c. All other officers shall be elected at sectional caucuses. There shall be a Northern Section Caucus and a Southern Section Caucus composed of all members of This Committee resident in the respective sections.

d. Candidates for offices shall file a notice of their intention to run for office with the Secretary of the Convention no later than 9 A.M. of the day of the election for that office is to be held.

e. Officers elected by the Sectional caucuses shall be presented to the entire membership for ratification. If any sectional officer fails to be ratified by the entire membership, the Sectional caucus shall hold a special meeting immediately and another officer shall be selected; said election will be subject to the same ratification process.

f. Candidates shall be allowed no more than four banners in designated areas of the auditorium, not exceeding 3 x 8 feet in size and affixed to the walls by masking tape.

g. Candidates may distribute materials in the lobbies and corridors in such manner as they choose, provided it does not interfere with normal movements of people or the conduct of convention business, including registration.

h. Following the close of nominations for officers, no additional nominations shall be permitted, except for an office for which no person has been nominated prior to the close of nominations or for which all persons nominated have withdrawn.

i. No vote for any person shall be counted unless the person has been duly nominated for, and has accepted the nomination for the office for which such vote is cast.

j. In the event only one person is nominated for any office and such person accepts the nomination, the Secretary of the meeting shall be directed to cast a unanimous ballot for such candidate at the time of the election.

k. In the event no candidate receives a majority vote on the first ballot, a run-off election (second ballot) shall be held between the two persons receiving the largest number of votes. A majority of the votes shall constitute a majority of the votes actually cast for all candidates who have been duly nominated for and have accepted the nomination for the office involved.

l. All voting for State Officers shall be by secret ballot except when there is but one candidate.

Section 4. TERM OF OFFICE

The term of office shall be for two years or until a successor is elected.

Section 5. VACANCIES

A vacancy in any office shall be filled by the Executive Board.

Section 6. REMOVAL OF OFFICERS

An officer of this organization may be removed from office for cause—that is, misconduct or neglect of duty in office as differentiated from the Party disloyalty reasons for removing a member from membership—by the following procedures:

a. At least 20 members of the Executive Board must sign and submit to the Secretary a written Statement of Charges containing the grounds for removal;

b. The Secretary, upon receipt of the Statement of Charges, must send to the accused officer by registered mail a copy of the Statement of Charges and a letter stating that the accused officer may either resign or have a hearing by way of motion for removal at the next regular meeting of the Executive Board.

c. If the accused officer does not resign, the Secretary shall send a copy of the Statement of Charges to all members of the Executive Board along with the notice for the next regular meeting of the Executive Board;

d. At said next regular meeting of the Executive Board the accused officer shall be afforded an opportunity to respond to the charges. After such hearing, upon motion for removal made by one of the signatories to the Statement of Charges, the accused officer may be removed by two-thirds (⅔) vote of all members present and voting, provided there is present and voting at least 33⅓ percent of the membership of the Executive Board.

ARTICLE IV

MEETINGS

Section 1. REGULAR MEETINGS

a. Each Democratic State Central Committee shall convene its first regular meeting (also known as its first meeting) in January after a general election on a weekend which shall be no later than the last full weekend of the month. The State Chair shall determine the precise dates, consistent with these guidelines.

b. The State Chair shall call This Committee to order at 10 A.M. on the morning of the first day of such meeting, and as soon as practicable thereafter shall cause the roll to be called from the list of certified members and proxies. The next business in order shall be the election of a temporary Chair which may be by acclamation, unless there is a contest, in which event the roll shall be called. The temporary Chair, upon election, shall appoint at once a committee on credentials and proxies, the composition and duties of which are set forth in Section 2 of Article V of these by-laws.

c. This Committee shall hold at least one meeting in each even numbered year.

Section 2. SPECIAL MEETINGS

This Committee may hold special meetings in any of the following ways: upon call of the State Chair; upon call of the Executive Board; or upon call of the State Chair within 15 days after receipt by the Chair of a written request signed by a majority of the members of This Committee.

Section 3. PLACE OF MEETINGS

a. The first regular meeting shall be held in Sacramento. Subsequent meetings of This Committee shall be held in a suitable location determined by the Executive Board or if the Executive Board does not meet, by the State Chair of the Party.

b. The State Chair of the Party shall notify the Secretary of State of the place and time of each meeting at least six weeks in advance of such meeting.

Section 4. AGENDA

a. The agenda for all regular meetings shall be determined by the Executive Board of the Party.

b. Such agenda shall include provisions for adoption of a Party Platform, election of Party officers, election of National Committee members, adoption of Party By-Laws and such other matters as may be deemed in the best interest of the Party.

Section 5. QUORUM

A majority of the credentialed members of the organization—represented either in person or by proxy—shall constitute a quorum for the transaction of business. If at any regular or special meeting of this organization, or a committee thereof, a quorum is not present, those present may adjourn from time to time until a quorum shall be present.

Section 6. PROXIES

a. Members of This Committtee may be represented at any meeting by proxy. The

person named in the proxy shall meet the same qualifications as the member; with the exception of residency requirements for statewide office holders or statewide nominees. In the event an appointee of a state legislator or member of congress is unable to attend, the appointee's proxy may be given to an otherwise qualified person of the same sex who resides either in the district of the appointing member or the appointed member.

b. All proxy appointments must be made under penalty of perjury and the name of the appointee must be handwritten by the appointing member for comparsion with the signature of the appointing member below. For the purpose of identification, the Party Staff shall maintain a signature card for each member of This Committee.

Further, the staff may require the proxyholder to show proof of eligibility or qualification. In the case of any emergency, the member may authorize some other member of This Committee to fill in the name of the appointee, who shall be subject to the same proxy qualifications as those set forth in subsection (a) of this Section. Such authorization must be handwritten and signed by the original member. The authorized member shall also countersign the appointment. Voting by Proxy shall not be permitted with respect to standing or Special Committees of this organization.

c. Alternates elected by Assembly District Caucuses shall serve as proxies for Assembly District delegates unable to attend.

d. Proxies to be recognized by the Secretary of State and the Credentials Committee shall be signed by the member under penalty of perjury and shall be in the form prescribed in California Elections Code, Sec. 8740.

e. No proxy shall be recognized unless filed in the office of the Secretary of State and with This Committee not later than 5 P.M. of the day preceding the meeting of This Committee.

f. Revocation or change of proxies shall be recognized by the Credentials Committee only upon a personal request made by the member before that Committee.

Section 7. PARLIAMENTARY PRECEDURES AND VOTING

a. In all cases not provided for by law or by these By-Laws, the meeting of this organization shall be governed by *ROBERT'S RULES OF ORDER.*

b. When a voice or standing vote is taken at a meeting of This Committee, it shall be the duty of Assembly District Chairs to monitor their delegation to insure that only those eligible are voting.

c. When a roll call vote is taken, the roll call shall be conducted by the Assembly District Chairs who shall report the vote of their delegation to the Tally Clerk.

d. When voting is by secret ballot, the Secretary shall call the roll of the districts,

and as they are called, each member resident in the district shall show his or her credentials to a Tally Clerk and then deposit his or her ballot in the ballot box. More than one ballot box may be used or voting machines may be used.

e. On any demand by a member for a roll call vote, the Chair must present the demand to the floor. Upon approval by at least 250 members by a standing vote, the roll shall be called in the manner prescribed in subdivision (c) of this section.

f. During any vote, the Chair may cause the floor to be cleared of persons who are not members or alternates of This Committee or do not carry a proxy therefrom.

Section 8. RESOLUTIONS PROCEDURES

a. Resolutions must be received by the State Chair of the Party *30 calendar days* prior to a meeting of the Committee, except as provided in sub-sections (i.), (e.) and (f.) below.

b. All resolutions must be adopted by an A.D. Committee, County Central Committee, or a Chartered Democratic Club or sponsored by 25 members of This Committee.

c. Copies of resolutions submitted according to the above procedure shall be mailed by the State Chair of the Party to all members of the Resolutions Committee prior to a meeting of This Committee.

d. All resolutions presented from the floor at a meeting of This Committee must

have the unanimous consent of the Resolutions Committee or the signatures of two hundred members of This Committee.

e. All resolutions to be presented from the floor shall be qualified by the Secretary of the convention by 5 P.M. on the day before the resolution is to be presented.

f. The sponsor of each resolution coming later than 30 days prior to the meeting of This Committee shall be responsible for providing the Secretary of the convention with sufficient copies of their resolution for each member of each Assembly District delegation.

g. All resolutions must be typed.

h. Twenty (20) copies of each resolution must be provided to the Resolutions Committee by the sponsor(s) of the resolution.

i. Inducement (e.g. Whereas) clauses shall be limited to three (3) or less, and resolve clauses shall be limited to two (2) or less.

j. Resolutions must be no longer than one (1) 8½" x 11" typewritten page.

Section 9. SEATING

Seating at meetings of This Committee shall be organized by Assembly Districts.

Section 10. SPECIAL GROUP CAUCUSES

a. In order to implement policy guidelines for special group caucuses, This Commit-

tee may grant official recognition to a statewide caucus of ethnic minority members, or other broad elements of the membership for the purpose of assuring such groups the rights and means of participation in the policy decisions and the outreach programs of the party. Recognition shall be subject to the following provisions:

(1) A caucus membership list and caucus By-Laws are submitted for approval to the Executive Board by way of the Rules Committee.

(2) The Caucus membership list is comprised of at least one percent of the full membership of This Committee, with each person on such list affirming by signature support for the official recognition of such a caucus and affirming that he or she shares the demographic or similar identity which defines the caucus.

(3) The By-Laws are consistent with the By-Laws of this organization.

(4) Since all fundraising and expenditures of funds by the State Party, including all of its authorized groups, now require coordination under Federal and State Laws, each Special Group Caucus recognized by This Committee that proposes to solicit funds in the name of the Democratic Party consistent with the By-Laws and purposes of the Democratic Party, shall present a biennial fundraising and budget proposal, and shall submit it to the Budget and Finance Committee or the State Chair

for recommendation and approval. Those events which are not included in the main budget proposal shall be submitted on an individual basis.

(5) Quarterly financial reports shall be filed by such caucus groups with the Treasurer of the Democratic State Party to comply with law. The Treasurer shall meet with and advise the treasurer of the recognized special group caucuses in regard to the required reporting of funds.

b. Official recognition of a caucus shall extend through the remainder of the two-year term of membership on This Committee.

The Chair of an officially recognized caucus shall be a member of the Executive Board of This Committee.

d. Membership and full voting rights in an officially recognized caucus shall be open to all registered Democrats who meet the membership requirements of such caucus by-laws.

ARTICLE V

STANDING COMMITTEES AND SPECIAL COMMITTEES

Section 1. STANDING COMMITTEES AND SPECIAL COMMITTEES

The following standing committees shall be appointed: The committee on credentials and proxies; the committee on rules; the committee on resolutions; the platform committee; the committee on affirmative action; the com-

mittee on legislation; the committee on finance and the campaign services committee. In addition, the State Chair of the Party may appoint such special committees as he or she deems appropriate.

Section 2. CREDENTIALS COMMITTEE

a. The standing committee on credentials and proxies (designated as the Credentials Committee) shall be divided as equally as possible between the Northern and Southern sections as selected by the State Chair of This Committee from among its membership. The State Chair shall also appoint the chair or Co-Chairs from among its members.

b. It shall be the duty of the Credentials Committee to approve the credentials of all persons appointed or elected to This Committee and to present a list of qualified members to the Temporary Chair of This Committee as soon as practicable. The Credentials Committee shall review and approve all proxies in accordance with Section 6 of Article IV of these By-Laws. All challenges of members or proxies shall be referred to the Credentials Committee for resolution.

c. For the purpose of the first biennial convention of This Committee, the Chair shall appoint such additional members of the Credentials Committee as may be necessary to assure that there shall be at least one member from each Senate District.

Section 3. RULES COMMITTEE

a. The standing committee on rules (designated the Rules Committee) shall con-

sist of from 15 to 25 members, selected by the State Chair of the Party. Thé State Chair shall also appoint the Chair or Co-Chairs of the Rules Committee from among its members.

b. It shall be the duty of the Rules Committee to keep the By-Laws and rules of This Committee consistent with the aims and policies of This Committee, to propose changes in the rules and By-Laws and special rules when necessary, and to interpret the rules and By-Laws when called upon by the State Chair or the Executive Board.

Section 4. RESOLUTIONS COMMITTEE

a. The standing committee on resolutions (designated the Resolutions Committee) shall consist of from 15 to 25 members appointed by the State Chair, at least four of whom shall hold a public office named in Article II, Section 2(a) of these By-Laws. The State Chair shall also appoint the Chair or Co-Chairs of the Resolutions Committee from among the members of This Committee.

b. It shall be the duty of the Resolutions Committee to review all resolutions proposed to This Committee or the Executive Board in accordance with these By-Laws. The Resolutions Committee shall have authority to recommend, reject, or amend all such resolutions prior to referral to This Committee or the Executive Board. The Resolutions Committee shall establish and publish the procedures for the proposition of resolutions that are consistent with these By-Laws.

Section 5. PLATFORM COMMITTEE

a. The Platform Committee shall consist of from 15 to 25 members appointed by the State Chair, at least four of whom shall hold a public office named in Article II, Section 2(a) of these By-Laws. The State Chair shall also appoint the Chair or Co-Chairs of the Platform Committee from among the members of This Committee.

b. It shall be the duty of the Platform Committee to hold at least one hearing in each section of the state, to have a platform draft available for interested persons on the first day of the meeting of This Committee at which the platform is to be considered, to hold a final hearing during the first day of that meeting, and to present to This Committee for approval a final draft of the platform during the second day of that meeting.

Section 6. FINANCE COMMITTEE

a. The standing committee on budget and finance (designated the Finance Committee) shall consist of from 15 to 25 members selected by the State Chair, at least five of whom shall be members of the Executive Board. The State Chair shall also appoint the Chair and Co-Chairs of the Finance Committee.

b. It shall be the duty of the Finance Committee to organize, in cooperation with the officers of This Committee, activities and policies designed the financial position of the Party; to prepare in cooperation with the State Committee a State Committee operating budget for presentation to the Executive Board; and

to review and report to the Executive Board on the budgeting policies of the State Party.

Section 7. ORGANIZATIONAL DEVELOPMENT COMMITTEE

a. The standing committee on organizational development (designated the Organizational Development Committee) shall consist of from 15 to 25 members appointed by the State Chair who shall also appoint the Chair or Co-Chairs of the committee.

b. It shall be the duty of the Organizational Development Committee to organize and supervise the educational and training efforts of This Committee, including grassroots organization and precinct level training, in cooperation with the officers of This Committee, and to recommend to the State Chair activities and policies designed to improve the organizational effectiveness of the Party.

Section 8. AFFIRMATIVE ACTION COMMITTEE

a. The standing committee on affirmative action (designated the Affirmative Action Committee) shall consist of from 15 to 25 members appointed by the State Chair, who shall also appoint the Chair or Co-Chairs of the committee.

b. It shall be the duty of the Affirmative Action Committee to implement and monitor the goal of affirmative action for selection of:

1. The delegates to all future State Conventions.

2. The members of all standing committees of the California Democratic State Central Committee.

3. The staff of the State Party.

Section 9. LEGISLATION COMMITTEE

a. The standing committee on legislation (designated the Legislation Committee) shall consist of 26 members, including 6 members appointed at-large by the State Chair and 20 additional members selected by the State Chair from nominations submitted by the Assembly District. The State Chair shall also appoint the Chair or Co-Chairs of the committee. Membership on the Legislation Committee shall be balanced as equally as possible between the sexes and between the Northern and Southern Sections, and must reflect the regional rural and urban, ethnic, and other diversities of the State's population.

Section 9.

b. It shall be the function of the Legislation Committee to propose legislation when needed, in response to the duties and policies of the Party: to maintain a listing of all pending legislation that is of "must" and/or major concern to the Party; and to keep a record of the vote by the Democratic Party legislators on such legislative items.

Section 10. Campaign Services Committee

a. The standing committee on campaign services (designated as the Campaign

Services Committee) shall consist of from 15 to 25 members, selected by the State Chair of the Party. The committee membership shall include 2 members of the Congressional Delegation or their selected representatives, 2 members of the State Assembly and 2 members of the State Senate. The State Chair shall also appoint the Chair or Co-Chairs of the Campaign Services Committee from among its members.

b. It shall be the duty of the Campaign Services Committee:

(1) To develop goals and guidelines for State Party mail services program for state and local campaigns.

(2) To develop goals for the Campaign Task Force.

(3) To coordinate training seminars which include instruction on campaign management, issues, and financial reporting requirements.

(4) To recommend guidelines to the State Chair and Executive Board on the use of the Party bulk mail permit.

ARTICLE VI

ASSEMBLY DISTRICTS AND ASSEMBLY DISTRICT COMMITTEES

Section 1. Assembly Districts

a. The Assembly District shall be the basic organizational unit of the Democratic State Central Committee.

b. It shall be the duty of all members of this Committee to establish and maintain an

Assembly District Committee in the district in which they reside.

c. The State Chair and State Party Staff shall provide assistance as needed, especially in the decennial period of district to apportionment.

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Section 2. Assembly District Committees

a. Each Assembly District Committee shall consist of all members of This Committee resident in the district; all county committee members resident in the district; a representative resident in the District of each Democratic Club or other chartered Party organization with membership in the District; and any other registered Democrat resident in the District, as determined by the By-Laws of that Assembly District Committee.

b. The Assembly District Committee:

(1) shall elect its own officers and adopt Assembly District By-Laws consistent with By-Laws of this Committee;

(2) shall be responsible for effecting liaison with Democratic campaign organizations operating within the Assembly District and with appropriate County Committee(s);

(3) shall be responsible, in cooperation with the relevant county committee(s), for encouraging and developing the Party organization at the level of the precinct or in clusters of precincts, designated as Areas, within the Assembly District;

(4) shall carry out its organization and campaign responsibilities under the general direction of this Committee and the Executive Board of this Committee, and shall carry out the policies and programs of this Committee in the Assembly District;

(5) shall be entitled to direct representation on the Executive Board of this Committee by one vote per Assembly District.

c. The Assembly District Representative:

(1) the Assembly District Representative to the State Executive Board, together with an alternate of the opposite sex, shall be elected by the Assembly District Committee members, meeting at the conclusion of the Assembly District Caucus called for in Article II, Section 5(b) and 5(d) of these By-Laws, or at a meeting of the Committee held within the District not more than 35 days thereafter.

(2) The Assembly District Representatives must be chosen from among those persons who will be delegates to the forthcoming January State Convention.

(3) Eligibility for election as Assembly District Representatives shall also be limited to the appointed members of this Committee and those members who were elected to membership by their respective Assembly District Caucuses.

(4) Subject to the foregoing provisions, the Assembly District Chair and/or Vice Chair may be eligible.

(5) in the event that an Assembly District Committee has not been represented at two successive meetings of the Executive Board, both the Representative and the alternate shall be subject to removal from the board upon notification of the respective Assembly District Committee.

Section 3. ASSEMBLY DISTRICT EXECUTIVE COMMITTEE

a. The Assembly District Executive Committee shall consist of all members of this Committee resident in the Assembly District, and such other members of the Assembly District Committee as may be provided for in the Assembly District By-Laws.

b. The Executive Committee shall exercise such powers and duties as may be assigned to it by the Assembly District By-Laws.

c. Prior to the Biennial Assembly District Caucus, the Executive Committee shall, on behalf of the Assembly District Committee, also perform those duties and responsibilities for the Assembly District Caucus as set forth in the provisions for Assembly District Caucuses elsewhere in these By-Laws.

ARTICLE VII

ASSEMBLY DISTRICT CAUCUSES

Section 1. ASSEMBLY DISTRICT CAUCUSES

a. **Regular,** biennial Assembly District Caucuses shall be held within each District in the State:

(1) within 35 days following the regular statewide election and on a day determined by the Executive Board of This Committee; and

(2) upon the call of the Democratic nominee for the Assembly at the general election or by the nominee's designee. However, if the Assembly District nominee, or, if none, the Democratic Senate nominee of the previous general election, the caucus shall be called by that person or his or her designee. If the Assembly District is the residence of more than one such person, in addition the Assembly nominee, the caucus shall be called by the person whose Senatorial District includes the greatest proportion of the registered voters of the Assembly District, or that person's designee. In the event of the failure of appropriate person to call the caucus, the chair of This Committee shall call the caucus.

b. The person calling the Assembly District Caucus and the Assembly District Committee shall make every reasonable effort to make known to all registered Democrats in the district the time, place or places, and purpose of the caucus.

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Section 1.

c. The person calling the regular, biennial Assembly District Caucus or that person's designee shall preside over the caucus as temporary chair until such time as a permanent chair is elected at the caucus.

d. A registration fee for all voting participants at the Assembly District Caucus may be set by the Assembly District Executive Committee. Such fee shall not exceed five dollars.

e. A list of the names and addresses of all persons attending the Assembly District Caucus as participants shall be forwarded to the State Chair of the Party by the Assembly District Chair within one week following that caucus.

f. Each caucus participant shall be asked, on a form provided by the Assembly District Committee, to indicate his or her willingness to assume an organizational responsibility for one or more precincts within the district or to assume another specified organizational responsibility for the Party in the District. Copies of a list of the persons expressing a willingness to assume responsibility and of the responsibility they are willing to assume shall be sent by the Assembly District Chair of the Party and the Chair of the appropriate county committee(s).

g. In Assembly Districts which include more than one county, the Assembly District Executive Committee may choose to

hold sub-district caucuses simultaneously in the constituent counties. State Committee entitlements shall be prorated according to Democratic registration, with each sub-caucus entitled to elect at least one member.

h. The person calling the caucus shall be assisted by an Assembly District Caucus Committee in setting the time and place of the caucus and the procedure to be followed at the caucus. The Assembly District Caucus Committee shall consist of all members of the State Central Committee who attained such membership by operation of law or by appointment after the preceding primary election residing in the district.

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i. Any person seeking election to the State Central Committee shall, at least five days prior to the Assembly District caucus, deliver to the temporary chair a nomination paper subscribed to by the number of signers set forth in subdivision (e) of Section 6495. The nomination paper shall be in a form substantially similar to that which is set forth in Section 6494, except that the paper shall not be examined and certified by the county clerk. The county clerk shall not be required to prepare or distribute nomination papers to persons seeking election pursuant to this section.

ARTICLE VIII

EXECUTIVE BOARD

Section 1. EXECUTIVE BOARD

There shall be an Executive Board of This Committee which shall have all the powers

and duties of this organization when it is not in actual session.

Section 2. EXECUTIVE BOARD MEMBERSHIP

The Executive Board shall consist of the following members of This Committee.

a. The following public officials:

(1) All United States Senators.

(2) The Governor, Lieutenant Governor, Treasurer, Controller, Attorney General, Secretary of State and all members of the State Board of Equalization;

(3) One member of the House of Representatives from each Section, each of whom shall be selected by the members of the House of Representatives on This Committee.

(4) One member of the State Assembly from each Section, each of whom shall be selected by the members of the Assembly on This Committee.

(5) One member of the State Senate from each Section, each of whom shall be selected by the members of the State Senate on This Committee.

b. County Committee representatives elected as follows:

(1) One County Committee representative shall be elected for each 100,000 registered Democrats or portion thereof resident in the county.

(2) County Committee representatives to the Executive Board shall be

elected by their respective County Committees at their first regular meeting following the DSCC state convention in an odd-numbered year. Only DSCC members shall be eligible for such election.

(3) County Committee representatives shall be divided as equally as possible between men and women.

c. All Assembly District Representatives.

d. All National Committee Members of the Party.

e. All Officers and immediate past officers of This Committee.

f. The president of the California Democratic Council and of the California Federation of Young Democrats.

g. The chair or co-chairs of each Standing Committee of This Committee.

h. The chair of each Caucus officially recognized by This Committee pursuant to Article IV, Section 10 of these By-Laws.

Section 3. EXECUTIVE BOARD ORGANIZATION

The State Chair shall be the Chair of the Executive Board, and the State Secretary shall be the Secretary of the Executive Board.

Section 4. EXECUTIVE BOARD MEETINGS.

a. The Executive Board shall convene in regular meetings at least four times in each calendar year. Such regular meetings shall be held at such time and place

as the Executive Board may designate so long as no two consecutive meetings are held in the same Section.

b. The Executive Board may convene in special meetings in the following manner:

(1) At the call of the State Chair and at such time and in such place as he or she may designate; or

(2) Upon written request submitted to the State Chair of ten or more members of the Executive Board and at such time and in such place as they may designate.

c. Notice of the regular and special meetings shall be given by the Secretary. The Secretary shall mail the notices to each member of the Executive Board at least ten days prior to the meeting. If, upon good cause, the time is shortened, notice must be given at least three days prior to the meeting.

Section 5. EXECUTIVE BOARD VOTING

a. Members of Executive Board may vote in person or by proxy. To vote by proxy, the following conditions must be met:

(1) If the member is a representative of a County Central Committee, such member may designate in writing, as his or her proxyholder only a person who is a member or alternate of the same County Committee.

(2) Such proxyholder may vote at Executive Committee meetings only in

absence of the duly elected alternate from that Assembly District.

(3) Any other member may designate as his or her proxyholder a person who is a resident in the same Section in which the designating member resides.

b. Proxies shall be filed in writing with the Secretary of This Committee.

c. Voting by proxy shall not be permitted with respect to any Standing or Special Committee of the Executive Board.

Section 6. EXECUTIVE BOARD QUORUM

Fifty members of the Executive Board shall constitute a quorum for the transaction of business.

Section 7. EXECUTIVE BOARD RESOLUTIONS

Submission of resolutions to the Executive Board shall be in accordance with the following procedures:

a. Resolutions must be received *10 calendar days* prior to a meeting of the Executive Board by the State Chair of the Party, except as provided for in subdivision (d) below.

b. All resolutions must be signed by the author and sponsored by a member of This Committee.

c. Copies of resolutions submitted according to the above procedures shall be mailed by the State Chair to all members of the Resolutions Committee prior to an Executive Board meeting.

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d. All resolutions presented from the floor must have the signatures of 50 Board members or unanimous consent of those Resolutions Committee members present in order to be considered. If unanimous consent of the Resolutions is sought, 25 copies of the Resolutions to be considered should accompany the request and be delivered to one of the co-chairs of that Committee.

e. If the resolution is presented from the floor, the sponsor(s) must submit to the Secretary sufficient copies for each member of the Executive Board present.

f. Resolutions to endorse or oppose any state ballot proposition shall require 60% majority for approval by the Executive Board.

g. The vote on such resolutions concerning state ballot propositions shall be taken up at the regularly scheduled Executive Board meeting immediately preecding the statewide election involved.

ARTICLE IX

STEERING COMMITTEE

Section 1. STEERING COMMITTEE

There shall be a Steering Committee of this organization which shall have the power and duty to carry out the directives and policies of the Executive Board and to exercise such powers of the Board as that Board may vest in the Steering Committee.

Section 2. STEERING COMMITTEE MEMBERSHIP

The Steering Committee shall be composed of the following members:

a. All officers of This Committee.

b. A national committeeman and a national committeewoman from each Section and chosen by their colleagues.

c. The President of the California Democratic Council.

d. The President of the California Federation of Young Democrats.

e. One member selected by and from the Executive Board membership of each of the following County Central Committees; Los Angeles County, San Francisco County, San Diego County, Alameda County, Orange County and Sacramento County.

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f. All United States Senators from California.

g. Two *additional* members, representing two additional counties in the Northern Section, selected by a caucus of those Executive Board members from the County Central Committees of the Party who are resident in the Northern Section, one of each sex.

h. Two *additional* members, representing two additional counties in the Southern Section, selected by a caucus of those Executive Board members from the County Central Committees of the Party who are resident in the Southern Section, one of each sex.

i. Five members, representing five different Assembly Districts in Northern Section, selected by a caucus of those Assembly District Representatives who are resident in the Northern Section, no less than two of whom shall be of each sex.

j. Same as (i) but with Southern Section, one of each sex.

k. One member of the United States House of Representatives, one State Senator and one member of the State Assembly from the Northern Section, and one member of the United States House of Representatives, one State Senator and one member of the State Assembly from the Southern Section, as selected by their respective colleagues for the State Executive Board in Article 8, Section 2(a) of these By-Laws.

l. The Chairpersons for each of the standing committees of this committee as designated in Article 5 of these By-Laws.

Section 3. STEERING COMMITTEE ORGANIZATION

a. The State Chair shall be chair of the Steering Committee, and the Secretary shall be secretary of the Steering Committee.

Section 4. STEERING COMMITTEE MEETINGS

a. The Steering Committee shall convene at the call of the State Chair and at such time and in such place as he or she may designate.

b. Proxy voting shall not apply to the Steering Committee.

Section 5. STEERING COMMITTEE QUORUM AND NOTICE

a A majority of the Steering Committee shall constitute a quorum, except that two-thirds of the quorum must be other than officer-members of This Committee.

b. Notice shall be given in the same manner as provided for notice of Executive Board meeting, except that upon good cause, time may be shortened to 24 hours on telephone notice.

ARTICLE X

AMENDMENT OF THE BY-LAWS

Section 1. AMENDMENT

These By-Laws may be amended at any meeting of This Committee or by the Executive Board, provided, that the Executive Board amends these By-Laws in the following manner:

a. The amendment must be submitted to the Rules Committee and filed with the Secretary at a meeting held no less than thirty days prior to the meeting at which the amendment is to be voted on.

b. A copy of the amendment shall be sent with the meeting notice to each member of the Executive Board at least ten days in advance of the meeting at which the amendment is to be voted on.

c. If the Rules Committee fails to approve a proposed amendment, such amendment may be presented from the floor with the consent of a majority of those present.

d. These By-Laws shall not be amended by the vote of less than a majority of the total number of members of the Executive Board, or two-thirds (⅔) of those members of the Executive Board voting and present at any meeting thereof, whichever is smaller.

Section 2. **EFFECTIVE DATE**

By-Laws or any amendments thereto shall go into effect and become effective immediately upon their adoption.

ARTICLE XI

GENERAL POLICIES

Section 1. All public meetings at all levels of the Democratic Party shall be open to all members of the Democratic Party regardess of race, color, creed, national origin, sex, age, religion, ethnic identity, sexual orientation or economic status.

Section 2. No test for membership in, nor any oaths of loyalty to, the Democratic Party shall be required or used which has the effect of requiring prospective or current members of the Democratic Party to acquiesce in, condone or support discrimination on the grounds of race, sex, age, color, creed, national origin, religion, ethnic identity, sexual orientation or economic status.

Section 3. The time and place of all public meetings of the Democratic Party on all levels should be publicized fully and in such manner as to assure timely notice to all interested persons. Such meetings must be held in places accessible to all Party members and large enough to accommodate all interested persons.

Section 4. The Democratic Party, on all levels, should support the broadest possible registration without discrimination on grounds of race, sex, age, color, creed, national origin, religion, ethnic identity, sexual orientation or economic status.

Section 5. The Democratic Party shall publicize fully and in such a manner as to assure notice to all interested parties a full description of the legal and practical procedures for selection of Democratic Party Officers and representtives on all levels. Publication of these procedures shall be done in such fashion that all prospective and current members of the State Democratic Party will be fully and adequately informed of the pertinent procedures in time to participate in each selection procedure at all levels of the Democratic Party Organization.

Section 6. The Democratic Party shall publicize fully and in such a manner as to assure notice to all interested parties a complete description of the legal and practical qualifications of all officers and representatives of the State Democratic Party. Such publication shall be done in timely fashion so that all prospective candidates or applicants for any elected or appointed position within the State Democratic Party will have full and adequate opportunity to compete for office.

EXHIBIT 3

1983-84 STANDING RULES AND BYLAWS

(As Adopted 1/30/83)

with

PROPOSED AMENDMENTS

(To be Considered at the Long Beach Convention)

*NOTE: PROPOSED NEW LANGUAGE APPEARS IN ALL UPPER CASE, UNDERLINED**

Proposed Deletions are ((Double-bracketed and-lined-out))**

CALIFORNIA REPUBLICAN PARTY
1228 N Street, Suite 14, Sacramento, California 95814
(916) 443-0967

August 15, 1983

MEMORANDUM

TO: All Voting Members

FROM: Robert Laurie, Chairman Rules Committee

RE: *PROPOSED BYLAW AMENDMENTS*

Several proposed amendments to the CRP Bylaws have been submitted to your Rules Committee for consideration. On July 30th the Committee met to review and discuss these proposals. The Committee found the following six proposals worthy of further study and possible action. It is our intention to hold a second hearing on these six proposals at the beginning of the State Convention, Friday afternoon, September 30th. At that time we will take testimony on each proposal from members and associate members. The Rules Committee will then decide which of the proposals to put before the Convention as amendments to the Bylaws, for adoption Sunday, October 2nd.

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*In printed text italicized.

**Copy in double parenthesis was crossed out in original. Unable to duplicate in printed text.

1) Party Loyalty - Add language to clarify Party's right to discipline members who endorse or support non-Republicans.

2) Party Organization - provide that Party caucuses be organized along County rather than Senatorial district lines.

3) Executive Committee - Add language to clarify which organizations have ex-officio seats on the Executive Committee, and to realign County Chairmen's districts to avoid crossing regional lines.

4) Chairman - Add language to clarify the duties of the Chairman.

5) Vacancies - Substitute new language, clarifying the procedures for filling vacancies of elected officers.

6) Fiscal Year - Change the start of the Party's fiscal year from June to January to coincide with FPPC and FEC reporting cutoff dates.

1983-84 STANDING RULES and BYLAWS
(as adopted 1/30/83)

ARTICLE I
Members

Section 1.01

REGULAR MEMBERS. The Republican State Central Committee of California, also known as the California Republican Party, hereinafter called "Committee" shall be those persons delineated by the elections code of the State of California. All persons so designated as members of the Committee shall be considered regular members.

Section 1.02

ASSOCIATE MEMBERS AND YOUTH ASSOCIATE MEMBERS. Each regular member of the Committee may appoint the following: (a) Four persons at least one of whom shall be between 18 and 30 years of age. They shall

be designated as Associate Members of the Committee. (b) Two persons each of whom shall be between the ages of 16 and 21 years, and shall be a registered Republican or shall have indicated his intention to affiliate with the Republican Party upon reaching voting age. They shall be designated as Youth Associate Members of the Committee. Each appointment shall be made in writing signed by the regular member, and filed with the Committee. Associate members shall have all of the privileges, rights, and duties of other members, except that they shall be entitled to vote only when designated, qualified, and acting as a proxy for a member at any regular committee or standing committee meeting. Youth Associate Members shall have all privileges, rights, and duties of other Associate Members. However, a Youth Associate Member not registered with the Republican Party shall not be designated as a proxy and be allowed to vote. Associate Members, once appointed, shall continue to serve as Associate Members during successive terms of the Committee upon the condition that all dues required by these Bylaws are paid on a current basis. This section shall in no way affect the right of each Regular Member to make additional appointments pursuant to subsection (a) to each successive Committee.

Section 1.03

REMOVAL OF MEMBERS. The Committee or the Executive Committee may remove any appointive member pursuant to Section 9168 of the Elections Code who, during his term of membership, affiliates with or registers as a member of another party other than the Republican Party, publicly advocates that the voters should not vote for the nominee of the party for any office, or who gives support to or avows a preference for any candidate of another party other than the Republican Party, or for a candidate for partisan office who is opposed to a candidate nominated by the Republican Party or who fails to pay dues in accordance with Section 1.05. *THE COMMITTEE OR EXECUTIVE COMMITTEE MAY CENSURE OR PROVIDE REPROVAL OF ANY MEMBER WHO DURING HIS TERM OF MEMBERSHIP PUBLICLY ADVOCATES*

THE ELECTION OF, OR PUBLICLY SUPPORTS ANY NON-REPUBLICAN FOR ANY ELECTIVE OFFICE.

Section 1.03.5

Prior to such removal, except for non-payment of dues for which cause the Executive Committee may remove the member, a written statement setting forth the alleged causes for removal shall be filed with the Chairman. Within ten days the Chairman shall notify the accused member and supply him with a copy of the charges. The accused member may file a written answer to these charges within thirty days. At the conclusion of this period or upon receipt of the reply, the Chairman or the Secretary, in the event the charge is against the Chairman, shall appoint an investigating committee consisting of not less than three regular members. The investigating committee may provide for a hearing and shall provide such hearing upon request of the accused member. The committee then shall report to the Executive Committee who shall determine what action shall be taken. Any member removed by such action may appeal the decision to the next meeting of the Committee. *ANY ACTION TO REMOVE A MEMBER PURSUANT TO SECTION 1.03 MUST BE TAKEN DURING THE TERM IN WHICH THE ACT CAUSING REMOVAL OCCURRED OR DURING THE TERM IMMEDIATELY THEREAFTER. THE PERIOD OF REMOVAL SHALL BE FOR THE REMAINDER OF THE PERSON'S TERM OF APPOINTMENT.*

Section 1.04

VACANCIES. In the event of a vacancy in the position of a member of the Committee caused by the death, resignation, or otherwise, said vacancy shall be filled in accordance with the Elections Code of the State of California. The Chairman shall appoint persons to fill any vacancies not otherwise provided by law. Each County Chairman may recommend to the Chairman qualified individuals for consideration in filling vacancies in the Associate Membership. If the quota of Associates is not filled within six months following the organizational meeting, or within sixty days following a vacancy in an Associate Membership previously

appointed, the Chairman may fill such vacancy or vacancies only from the names recommended from the County or Counties where such vacancies occurred. Should any County Chairman fail to recommend qualified individuals the Chairman may fill vacancies at large not to exceed the maximum otherwise authorized.

Section 1.05.

DUES. In accordance with Section 9275 of the Elections Code, membership dues in the amount of twenty-four dollars ($24.00) per year shall be remitted by regular members to the Republican State Central Committee not more than thirty (30) days after formal notification from the treasurer of said Committee. Dues of Associate Members shall be sixteen dollars ($16.00) per year except for those Associate Members under 30 years of age whose dues shall be twelve dollars ($12.00) per year. Dues of Youth Associate Members shall be six dollars ($6.00) per year. A final ten day written notice by registered or certified mail shall be sent by the Chairman prior to removal of a member for nonpayment of dues.

ARTICLE II

Meeting of Members

Section 2.01

TIME AND PLACE OF MEETINGS. The first and organization meeting of the Committee shall be held biennially at the time and place as provided by the Elections Code of the State of Californa. Other meetings, either regular or special, shall be held either at such time and place as may be designated by the Committee, or, in the absence of such a designation, upon call of the Chairman, or in the event of his absence or inability to act, upon call of the Vice Chairman, or in the event of his absence or inability to act, upon call of any officer, which shall designate the time and place for the holding of such meeting.

Section 2.01.5

Regular sessions of the Committee shall be held no less than twice each calendar year so that the proper business and important activities of this body can be constructively and continuously pursued.

Section 2.02

NOTICE OF MEETINGS. Notice of meetings of the Committee other than the biennial organization meeting, shall be in writing, mailed to the last address of each member on file in the office of the Committee, mailing to be made at least thirty (30) days prior to the date of such meetings. If the office of the Committee has no address for such member, the mailing to the office of the Committee shall be considered as proper notice. The notice shall state the time and place of the meeting and may include an agenda of the business intended to be conducted at such meeting, provided that the inclusion of such agenda shall not limit the business to those items mentioned in the notice.

Section 2.03

QUORUM. A quorum of the State Central Committee is a majority of the entire membership represented either in person or by proxy.

Section 2.04

PROXIES. Proxies for the organization meeting of the Committee shall be in the manner designated by the Elections Code of the State of California. At any meeting of the Committee other than at the organization meeting, one individual either regular or associate member, may be designated as a proxy for only one member. An individual shall not hold a proxy for more than one member. Such proxy shall be handed to the Chairman or the Chief Administrative Officer of the Committee no later than the time designated for the convening of the meeting to which the proxy applies. The proxy may vote only if the regular member is absent from the meeting at the time of the vote and such proxy expires upon adjournment of that meeting.

Section 2.05

VOTING. Voting shall be by regular members only, in person or by proxy. At the organization meeting the temporary Chairman shall be elected pursuant to Section 9270 of the Elections Code and other officers shall be elected

pursuant to Section 9272 of the Elections Code. In cases other than the election of officers, voting shall be by voice or the Chairman may request a poll of the ((Senatorial District)) *COUNTY* delegation in which case proxies shall sit in the district of the member represented by them. A roll call may be demanded by 250 or more members in which case the roll shall be called of the regular members and such member or his proxy shall vote when his or her name is called. In the case of the election of officers, voting shall be by BALLOT.

ARTICLE III

The Executive Committee

Section 3.01

NUMBER OF EXECUTIVE COMMITTEE. The Chairman shall appoint an Executive Committee consisting of not more than one hundred (100) regular members, including, but not limited to, the following:

a. All elected officers of the Republican State Central Committee.

b. One person from each Senatorial District not otherwise represented.

c. The elected or nominated constitutional office for Governor, Lieutenant Governor, Attorney General, Secretary of State, Controller and Treasurer.

d. California's Republican National Committee Members

e. California's elected or nominated Republicans for the United States Senate.

f. Two members to be selected by the California Republican Congressional delegation.

g. Two members to be selected by the Republican State Senators.

h. Two members to be selected by the Republican Assemblymen.

i. 16 County Chairmen, one each to be selected by the County Chairmen of the following districts:

1. Northwest Counties: Del Norte, Humboldt, Lake, Mendocino, and Sonoma.
2. Upper Central Valley: Butte, Glenn, Shasta, Siskiyou, Tehama and Trinity.
3. Upper Northeast: Lassen, Modoc, Plumas, and Sierra.
4. Sacramento Valley: Napa, Sacramento, Solano, and Yolo.
5. South Sacramento Valley: Colusa, Nevada, Placer, Sutter, and Yuba.
6. San Joaquin Mother Lode: Alpine, Amador, Calaveras, El Dorado, ((Mono)), San Joaquin, Stanislaus, and Tuolumne.
7. Central California: Fresno, Kings, Madera, Mariposa, Merced, and Tulare.
8. Bay Area: Alameda, Contra Costa, Marin, and San Francisco.
9. South Bay Area: San Benito, San Mateo, and Santa Clara.
10. South Coast: Monterey, ((San Luis Obispo)), and Santa Cruz.
11. Tri-County: *SAN LUIS OBISPO*, Santa Barbara and Ventura.
12. Los Angeles Basin: Los Angeles.
13. Southeast Area: ((Inyo, Kern)), Riverside, and San Bernardino.
14. Southern: Imperial, Orange, and San Diego.
15. ((Two additional County Chairmen to be selected by the Chairman.))
15. *EASTERN SIERRA: INYO, KERN AND MONO.*

16. *ONE ADDITIONAL COUNTY CHAIRMAN TO BE SELECTED BY THE CHAIRMAN.*

j. ((The State Presidents of the California Federation of Republican Women, the California Republican Assembly, the California Young Republicans, the United Republicans of California, the California Republican League, the California College Republicans, and the President, Vice President, Secretary, and Treasurer of the Association of Republican County Central Committee Chairmen.))

j. *THE PRESIDENT OR CHAIRMAN, AS THE CASE MAY BE, OF EACH STATEWIDE, VOLUNTEER ORGANIZATION CHARTERED BY THE STATE CENTRAL COMMITTEE OR BY THE REPUBLICAN NATIONAL COMMITTEE AND APPROVED FOR THIS PURPOSE BY THE EXECUTIVE COMMITTEE OF THE STATE CENTRAL COMMITTEE, AND THE PRESIDENT, VICE PRESIDENT, SECRETARY, AND TREASURER OF THE ASSOCIATION OF REPUBLICAN COUNTY CENTRAL COMMITTEE CHAIRMEN.*

k. The elected Associate Representative.

Section 3.02

EX-OFFICIO MEMBERS. All Republican legislators and County Central Committee Chairmen not designated in Section 3.01 shall be ex-officio members of the Executive Committee, but shall not be counted in constituting a quorum and shall not have the right to vote.

Section 3.03

POWERS AND DUTIES OF THE EXECUTIVE COMMITTEE. The Executive Committee is hereby granted all powers and duties of the Committee as provided by law.

Section 3.04

RULES AND REGULATIONS OF THE EXECUTIVE COMMITTEE. The Executive Committee may adopt such additional rules and regulations as it may deem necessary and proper which are not inconsistent with the Standing Rules and Bylaws.

ARTICLE IV

Officers

Section 4.01

OFFICERS. The following shall be the elected officers of the Committee to serve for the two year term following the organization meeting or until their successors be elected and qualified: Chairman, State Vice Chairman, Regional Vice Chairman for Northern California, Regional Vice Chairman for Central California, Regional Vice Chairman for Southern California, Secretary, First Assistant Secretary, Second Assistant Secretary, Treasurer, and Assistant Treasurer. In addition, the following shall be honorary officers of the Committee: The Republican National Committee Members for California, and the President of the Association of the Republican County Central Committee Chairmen of California. The Committee may appoint such additional subordinate officers as it may deem necessary from time to time. The office of the Chairman and State Vice Chairman shall rotate between the North and the South in accordance with provisions of the Election Code of California. This section to be effective as of the organization meeting in 1979.

Section 4.01.5

For the purpose of electing Regional Vice Chairmen, Northern, Central, and Southern California shall be defined as follows:

Northern California shall consist of the following counties: Alamedo, Butte, Colusa, Contra Costa, Del Norte, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Yuba.

Central California shall consist of the following counties: Alpine, Amador, Calaveras, El Dorado, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, San Joaquin, ((San Luis Obispo)), Stanilaus, Tulare, and Tuolumne.

Southern California shall consist of the following counties: Imperial, Los Angeles, Orange, Riverside, San Bernardino,

San Diego, *SAN LUIS OBISPO,* Santa Barbara and Ventura.

Each region may caucus to nominate a candidate for Regional Vice Chairman, and membership in such caucus shall be limited to regular members. Notwithstanding the action of any regional caucus, additional nominations may be made from the floor.

Section 4.01.6

A Sergeant at Arms shall be appointed by the Chairman.

Section 3.05

MEETINGS OF THE EXECUTIVE COMMITTEE.

a. The Executive Committee shall meet at such time and place as is designated in any call for a meeting issued by the Chairman or, in the absence or disability of the Chairman, the State Vice Chairman.

b. Notice of Meetings. Any call and notice for a meeting of the Committee issued as prescribed in Section 2.02 shall be automatically and without specific designation therefore, considered as, and shall constitute, a call and notice for a meeting of the Executive Committee, subject to the understanding that in such event the Executive Committee meeting will be convened only if a quorum of the full Committee is not present. In addition to the above, notice of a meeting of the Executive Committee may be given at any time by the Chairman or the State Vice Chairman to the members of the Executive Committee in the same manner as giving them a notice of a meeting of the Committee, except that it shall be given not less than five (5) days prior to such meeting.

c. Quorum. The presence in person of thirty (30) members of the Executive Committee shall constitute a quorum for the purpose of transacting business.

d. Voting. Voting in the Executive Committee shall be in person only, and voting by proxy shall not

be permitted. No person appointed pursuant to this article shall have more than one (1) vote.

Section 3.06

OFFICERS OF THE EXECUTIVE COMMITTEE. The regularly elected officers of the Committee shall likewise be the officers of the Executive Committee.

Section 3.07

VACANCIES. Any vacancies occurring in the Executive Committee through resignation, death, or otherwise, shall be filled by appointment in the same manner as the appointment was made of the member whose position has become vacant.

Section 4.02

DUTIES OF OFFICERS.

a. Chairman. The Chairman shall be the first executive officer of the Committee and shall have general supervision, direction, and control of the business and activities of the Committee and over the officers of the Committee. He shall preside at all meetings. The Chairman is authorized and empowered to make such appointments as may be required or permitted under the law to be made by the Chairman or by the Committee. The Chairman is authorized and empowered to accept resignations submitted by members and associate members of the Committee, and to fill vacancies as provided for herein. With regard to the organizational meeting, vacancies shall be filled within the period as provided by Section 9165 of the Elections Code; otherwise, within a period of thirty (30) days from the time when such appointment can first be made. The Chairman shall carry into effect, or cause to be carried out, instructions and orders of the Committee and perform such other duties as may be prescribed by law, rules,

or regulations, or by the Committee. In carrying out his duties, the Chairman may select and appoint an Executive Director or such other assistant or assistants, to whom he may delegate ministerial duties appertaining to his office. The Chairman shall be an ex-officio member of each standing committee, but shall not be counted for purposes of constituting a quorum. *THE TERM "CHAIRMAN" AS REFERRED TO IN THESE BYLAWS SHALL MEAN CHAIRMAN OF THE REPUBLICAN STATE CENTRAL COMMITTEE OF CALIFORNIA.*

b. State Vice Chairman. In the absence or disability of the Chairman, the State Vice Chairman shall perform all of the duties of the Chairman, and when so acting shall have the powers of, and be subject to, all of the restrictions placed upon the Chairman. The State Vice Chairman shall have such other powers and perform such other duties as from time to time may be prescribed by the Committee.

c. Regional Vice Chairmen. The Regional Vice Chairmen shall act for and on behalf of the Chairman in connection with the County Central Committees of their Region, subject to the direction of the Chairman, and shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Chairman or the Committee.

d. Secretary and Assistant Secretary or Secretaries. The Secretary shall be responsible for the keeping of the records of the membership and the proceedings of the Committee. The Assistant Secretary shall assist the Secretary in his duties and perform the duties of the Secretary in the absence or disability of the Secretary. The Secretary and the Assistant Secretary shall each have such other powers and perform such other duties as from time to time may be prescribed for them by the Committee.

e. Treasurer and Assistant Treasurer. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of all of the properties and business transactions of the Committee, including its assets, liabilities, receipts and disbursements. The Treasurer shall receive, have custody of, and be responsible for all money belonging to the Committee. The Treasurer shall deposit all money and other valuables in the name of, and to the credit of, the Committee with such depository as may be designated by the Committee. He shall disburse the funds of the Committee in accordance with the budget or as may be ordered by the Committee. The Treasurer shall be responsible for the preparation and maintenance of a manual of financial policies and procedures to be approved by the Budget and Expenditure Committee. The books of account shall at all reasonable times be open for inspection by all Committee members. Upon request of the Chairman, or the Committee, the Treasurer shall render a report and account of all of his transactions as Treasurer, and of the financial condition of the Committee. At the end of his term of office, the treasurer shall transfer to his successor all of the Committee's assests, accounts and records under his control and obtain a receipt therefor from his successor. The Assistant Treasurer shall assist the Treasurer in the performance of his duties, and in the absence or inability of the Treasurer to act, shall perform the duties of the Treasurer.

The Treasurer and the Assistant Treasurer shall have such duties as may be prescribed by the Committee.

Section 4.03

ELECTION OF OFFICERS. The officers shall be elected at the organization meeting of the Committee as provided by the Elections Code of the State of California.

Section 4.04

VACANCIES. ((Vacancies occurring by reason of resignation, death, or otherwise as to any elective office of the Committee shall be filled at the next meeting of the Committee, or Executive committee following the creation of the vacancy provided, however, the Chairman may appoint an acting officer to fill the vacancy until the next meeting of the Committee or the Executive Committee.))

a. *SHOULD A VACANCY OCCUR IN THE OFFICE OF THE CHAIRMAN, BY REASON OF RESIGNATION, DEATH OR OTHERWISE, THE VICE CHAIRMAN SHALL SUCCEED AUTOMATICALLY TO THAT OFFICE; PROVIDED HOWEVER, THE VICE CHAIRMAN SHALL SERVE ONLY AS ACTING CHAIRMAN FOR THE REMAINDER OF THE TERM AND SHALL NOT BE PROHIBITED FROM BEING ELECTED TO THE OFFICE OF CHAIRMAN IN THE FOLLOWING TERM.*

b. *SHOULD A VACANCY OCCUR IN ANY ELECTIVE OFFICE OTHER THAN CHAIRMAN, BY REASON OF RESIGNATION, DEATH OR OTHERWISE, THAT VACANCY SHALL BE FILLED BY APPOINTMENT BY THE CHAIRMAN AND CONFIRMED BY THE EXECUTIVE COMMITTEE, SUCH OFFICER SHALL HAVE THE POWER TO ACT IN CARRYING OUT THE DUTIES OF HIS OFFICE PENDING HIS CONFIRMATION.*

Section 4.05

REMOVAL OF OFFICERS. The Committee or the Executive Committee may remove from office any elected officer who publicily endorses any candidate other than himself for election prior to any contested primary election, or who allows the name of the Committee to be used to imply such endorsement.

ARTICLE V

Standing Committees other than the Executive Committee & the Budget & Expenditure Committee

Section 5.01

STANDING COMMITTEES CREATED. Standing Committees, other than the Executive Committee and the Budget and Expenditure Committee, are hereby created and shall consist of the following:

a. Committee on Proxies & Credentials
b. Rules Committee
c. Resolutions Committee
d. Finance Committee
e. Committee on Volunteer Organization
f. Cal. Plan Committee
g. Research Committee
h. Speakers Bureau
i. Veterans Committee
j. Platform Committee
k. Political Education Committee
l. Precinct Organization Committee
m. County Central Committee Chairmen's Committee
n. California State Congressional Target Committee
o. Other such special committees as the Chairman may feel necessary or advisable for the conduct of the business of the RSCCC.

Section 5.02

APPOINTMENT AND TERM OF COMMITTEES. At the commencement of each biennium, the new Chairman of the Committee shall, as soon as reasonably convenient after the election, appoint the standing committees, the members of which shall serve for a two-year term or until their successors are elected and qualified. The Committee on Proxies and Credentials shall consist of one regular member from each Senatorial District and as many associate members as the Chairman shall determine. All other standing committees shall consist of at least five (5) regular members, and as many associate members as the

Chairman shall determine. The membership of the California State Congressional Target Committee shall be chosen in the manner prescribed in Section 5.03 (g).

Section 5.03

DUTIES OF STANDING COMMITTEES. The duties of the standing committees shall be as follows:

a. PROXIES AND CREDENTIALS COMMITTEE. The Proxies and Credentials Committee, at each meeting of the Committee or of the Executive Committee, shall review the credentials of all members present. It shall review any proxies that have been presented for use at a meeting of the Committee and, at the request of the Chairman, shall report on the standing and status of all members and their proxies present and whether or not there is sufficient attendance to constitute a quorum.

b. RULES COMMITTEE. The Rules Committee shall consider proposed amendments to the standing rules and Bylaws as provided in Article XI.

c. RESOLUTIONS COMMITTEE. The Resolutions Committee at all meetings of the Committee or of the Executive Committee, shall receive, consider, and report on all general resolutions proposed for adoption by the meetings. No such resolutions shall be considered at the meeting until after a favorable report thereon by the Resolutions Committee, except by a two-thirds (2/3) vote of the voting members present. The Resolution Committee may, at its discretion, initiate and prepare resolutions and report the same to the members for consideration.

d. FINANCE COMMITTEE. The Finance Committee shall have the authority to develop, put into effect, and carry out plans to raise funds to support the activities of the Committee. For such purpose it shall prepare and submit for approval

a budget of proposed receipts and expenditures. The Treasurer shall be an ex-officio member of the Finance Committee. The Treasurer is authorized to pre-audit and approve expenditures of funds for the activities of the Committee included within the approved budget or within expenditures for other purposes which have been approved by the Committee. Checks in payment of duly authorized expenditures drawn against the funds of the Committee shall be signed by any two of the following: the Chairman, any Vice Chairman, the Secretary, the Assistant Secretary, the Treasurer, the Assistant Treasurer, or by one such officer and one of the following: the Executive Director or Administrative Officer. Each State Committee member, including each Associate Member, is requested to support the finance activities so approved, and for this purpose is requested to use his best efforts to raise contributions.

e. COMMITTEE ON VOLUNTEER ORGANIZATIONS. The Volunteer Organizations Committee shall cooperate with the various Republican volunteer organizations in developing the greatest possible utilization of their energies on behalf of the Republican Party. In the event that a volunteer organization petitions the Committee under Section 12301 of the Elections Code of the State of California, this committee shall conduct an investigation and report to the Chairman.

f. CALIFORNIA PLAN COMMITTEE. The California Plan Committee, herein designated as the "California Plan" is authorized and empowered to serve as an independent agency for the purpose and with the duty of conducting the election campaign and/or campaigns, including the financing thereof, for and on behalf of Republican nominees for election to any state, county, or

local partisan office, specifically excluding, however, all nominees and candidates for election to any federal office or for election as presidential or vice-presidential elector. The Treasurer of the Committee shall serve as the treasurer of the California Plan and shall receive, disburse, and keep all monies contributed or disbursed for campaign purposes, segregating the same from the funds of any other campaign agencies of the Republican Party and from other funds of the Committee. The California Plan shall prepare and file a campaign statement in accordance with law, which statement may be filed independently of or as a separate part of the filing of the Committee.

g. CALIFORNIA STATE CONGRESSIONAL TARGET COMMITTEE. The California State Congressional Target Committee shall be composed of all incumbent Republican Congressmen in the California Delegation, the Chairman and State Vice Chairman of the Republican State Central Committee, the National Committeeman and Committeewoman from California, and citizen members, one from the districts established under the provisions of Article III, Section 3.01(i). Citizen members to be selected by mutual agreement between the Chairman and the Campaign Chairman of the Congressional delegation. In the event that a mutual selection is not made from one or more of the districts, the County Chairman representing the district(s) on the RSCCC Executive Committee shall be automatically appointed to this committee. The Target Committee will work with the officers of the RSCCC in the establishment of a fund raising program compatible with State Committee programs. A separate bank account, in the name of the RSCCC, will be established to insure that funds raised for Congressional campaign purposes are so disbursed, and that their disbursement complies with all federal election laws. The signatures on said account will be an appointee of the Chairman of said Committee, and an appointee of the RSCCC Chairman.

h. PLATFORM COMMITTEE. The Platform Committee shall draft a platform as required by the California Election Code. The Committee shall submit a draft platform to the general membership for adoption, or recommend that the existing platform be re-adopted in its existing form at the Fall meeting of the State Committee in general election years.

1. The Platform Committee shall consist of the following members:

   A. The Chairman of the State Central Committee who shall serve as Chairman of this committee.

   B. All Vice Chairmen, the Secretary and the Treasurer of the State Committee.

   C. The Floor leaders, Caucus Chairmen, and Whips of the California State Assembly and Senate.

   D. The Speaker of the State Assembly and the President Pro Tem of the State Senate, if these offices are held by Party members.

   E. Incumbent State Constitutional officers, if they are members of the Party.

   F. Incumbent United States Senators from California, if they are members of the Party.

   G. The Delegation Chairman of the U.S. House of Representatives, or his designee.

H. The National Committeeman and National Committeewoman.

I. The President of the County Central Committee Chairmen's Association, or his designee.

J. The incumbent, or if none, the nominee for each Assembly and Senatorial District.

K. One member from each Assembly District selected in the ((Senatorial District)) *COUNTY* caucus at the organizational meeting.

2. Duties of the Platform Committee:

A. Duties of the committee shall be to select a drafting committee of one member for each four members of subsection h.1., paragraphs A through I, and one member for each four members from paragraph J, and one member for each four members from paragraph K.

B. The drafting committee shall meet and draft a platform which shall be presented to the full Platform Committee no later than July 1 for its consideration and action.

C. The Platform committee shall present the recommended platform to the full Committee for its consideration and approval at the Fall Meeting.

Section 5.04

MEETINGS OF COMMITTEES. Meetings of the standing committees shall be on call of the Chairman or Vice Chairman of the Committee or Chairman of the Standing Committee at such time, place, and on such notice as they may designate.

Section 5.05

VACANCIES ON STANDING COMMITTEES. In the event a vacancy on any standing committee is created by death, resignation or other cause, the Chairman shall, as soon as reasonably possible, fill said vacancy by appointment. Likewise, at any meeting of any standing committee, if a quorum of the members regularly appointed thereto be not present, the Chairman of the Committee may make temporary additional appointments thereto to serve only during and for the purposes of such meeting.

Section 5.06

REPORTS OF COMMITTEES. All standing Committees may report on any subject within the scope of that committee at each meeting of the Committee, and upon designation of the Chairman, at each meeting of the Executive Committee, and such other times as the Chairman of the Committee may direct.

ARTICLE VI

Office and Headquarters

Section 6.01

The Chairman of the Committee shall designate the Office and Headquarters of the Committee and such additional offices for the Committee as, in his opinion, may be necessary and proper.

ARTICLE VII

Order of Business

Section 7.01

At each meeting of the Committee or the Executive Committee the order of business shall be as follows:

1. Call to Order
2. Prayer
3. Pledge of Allegiance

4. Items on the Agenda
5. Committee Reports
6. Consideration of Old Business
7. Consideration of New Business
8. Announcements
9. Adjournment

ARTICLE VIII

The Committee shall hold harmless its members and officers from any liability, including legal representation, because of any activity on behalf of the Committee in performance of his or her duties, except acts of gross neglect.

ARTICLE IX

Parliamentary Rules

Section 9.01

The Chairman of the Rules Committee, or some member of such Committee designated by such Chairman, shall act as parliamentarian of each meeting of the Committee or Executive Committee.

Section 9.02

In all cases not provided for by the Elections Code or the Standing Rules and Bylaws of the Committee, the authority shall be Roberts' Rules of Order, Newly Revised.

Section 9.03

When an action is under debate or before the Committee, no amendment shall be in order when such amendment relates to a different subject or is intended to accomplish a different purpose than the original action. No motion or proposition on a subject different from that under consideration shall be admitted as an amendment.

Section 9.04

No motion, either oral or written, shall be adopted until the same shall be seconded and distinctly stated to the Committee by the Chairman.

Section 9.05

When an action is under debate or before the Committee, no motion shall be received but the following which shall take precedence in the order named:

First	—To adjourn
Second	—To recess to a time certain
Third	—To lay on the table
Fourth	—For the previous question
Fifth	—To set as a special order
Sixth	—To postpone indefinitely
Seventh	—To refer to or re-refer
Eighth	—To amend.

Section 9.06

Any standing rule or Bylaw of the Committee or the Executive Committee may be suspended temporarily by a vote of $\frac{2}{3}$ of the members present; provided, that such temporary suspension shall apply only to the matter under immediate consideration, and in no case shall it extend beyond an adjournment.

ARTICLE X

Fiscal Affairs

Section 10.01

FISCAL YEAR. The Committee's fiscal year shall commence on the first day of ((July)) *JANUARY*.

Section 10.02

FISCAL YEAR BUDGETS

a. The chairman shall submit to the Budget and Expenditure Committee for approval a complete and detailed bi-annual budget, setting forth all pro-

posed expenditures and estimated revenues. The bi-annual budget shall provide that expenditures shall not exceed revenues.

b. The budget shall show revenue and expenditures by month.

c. The budget may provide a contingency fund of an amount no greater than $100,000 that may be disbursed by the Chairman without prior approval of the Budget and Expenditure Committee.

d. The Chairman shall submit the budget to the Budget and Expenditure Committee no later than the May 15th following election as Chairman.

e. The Budget and Expenditure Committee shall approve a budget no later than the June 30th following the election of the Chairman.

f. All amendments and modifications to the approved bi-annual budget shall require approval from the Budget and Expenditure Committee except to the extent such authority to approve modifications has been delegated to the Executive Committee of the Budget and Expenditure Committee.

Section 10.03

BUDGET AND EXPENDITURE COMMITTEE

a. Membership. The Budget and Expenditure Committee shall consist of seventeen (17) members composed of seven (7) standing members and ten (10) appointed members.

1. The standing members shall be:

(a) The Chairman

(b) The Vice Chairman

(c) The Treasurer

(d) The Finance Chairman

(e) The Republican Senate Leader of the California Senate or a Senator designated by the Leader

(f) The Republican Assembly Leader of the California Assembly or an Assemblyman designated by the Leader

(g) The Chairman of the California Republican Congressional Delegation or a Congressman designated by the Delegation Chairman

2. The appointed members shall be as follows:

(a) The Chairman shall have four (4) appointments

(b) The Vice Chairman shall have three (3) appointments

(c) The Finance Chairman shall have three (3) appointments

3. The Chairman shall appoint from the members of the Budget and Expenditure Committee a Chairman of the Budget and Expenditure Committee who shall serve at the pleasure of the Chairman.

b. Duties. The duties of the Budget and Expenditure Committee are as follows:

1. Approve the budget and necessary modifications.

2. Monitor compliance with the budget, assuring that actual or anticipated expenditures do not exceed actual or anticipated revenues.

3. Establish an appropriate system of financial controls, including designation of persons authorized to approve expenditures and monitor the effectiveness of such controls.

4. Monitor compliance with financial reporting laws.

5. Report to the Executive Committee of the State Central Committee departures from approved budgets and established financial procedures.

c. Meetings. The meetings of the Budget and Expenditure Committee shall be as follows:

1. It shall meet at least twice a year at a time and place within California designated by the Chairman of the Budget and Expenditure Committee.

2. At least one meeting shall be held no later than June 30th of each year.

3. Additional meetings may be called by the Chairman, the Chairman of the Budget and Expenditure Committee, or any three members of the Budget and Expenditure Committee who submit to the Chairman of the Budget and Expenditure Committee a written request for such meeting, in which case, within three days from date the request is received, the Chairman shall issue a notice of a meeting of the Budget and Expenditure Committee to be held within the next thirty (30) days.

4. The Chairman of the Budget and Expenditure Committee shall give written notice of any meeting to all members of the Budget and Expenditure Committee at least 20 days prior to the date of such meeting unless notice of such meeting is waived by a quorum of the Budget and Expenditure Committee.

5. Nine (9) of the Budget and Expenditure Committee members constitute a quorum for the transaction of business.

6. Every act or decision done or made by a majority of the Budget and Expenditure Committee members present at a meeting duly held at which a quorum is present is the act of the Budget and Expenditure Committee.

d. Subcommittees.

1. There shall be an Executive Committee of the Budget and Expenditure Committee consisting of the Chairman, the Vice Chairman, the Finance Chairman, Chairman of the Budget and Expenditure Committee and Chairman of the Financial Controls Subcommittee. The Executive Committee of the Budget and Expenditure Committee shall have authority, on behalf of the Budget and Expenditure Committee, to approve increases or decreases of individual budget expenditures by an amount no greater than 10 percent of the aggregate expenditures approved by the Budget and Expenditure Committee. However, the aggregate of all modifications made by the Executive Committee may not increase the aggregate budget expenditures approved by the Budget and Expenditure Committee.

(a) The Chairman of the Budget and Expenditure Committee may call a meeting of the Executive Committee of the Budget and Expenditure Committee at such time and place within California as he designates.

(b) The Chairman of the Budget and Expenditure Committee shall give written and/or telephonic notice of any such meeting to all members of the Executive Committee of the Budget and Expenditure Committee at least 5 days prior to the date of such meeting unless notice of

such meeting shall be waived by a quorum of the Executive Committee of the Budget and Expenditure Committee.

(c) Three (3) of the members constitutes a quorum of the Executive Committee of the Budget and Expenditure Committee to transact business. Every act or decision done or made by a majority of such Executive Committee members present at a meeting duly held at which a quorum is present is the act of such Executive Committee.

(d) The Chairman of the Budget and Expenditure Committee shall inform, in writing, the members of the Budget and Expenditure Committee within 15 days of any meeting of the Executive Committee of the Budget and Expenditure Committee in which approval was given to changes in the budget.

2. The Chairman of the Budget and Expenditure Committee may appoint a Subcommittee on Financial Controls to assist in monitoring the effectiveness of financial controls.

Section 10.04

FINANCIAL REPORTS

a. The Chairman shall submit to the Executive Committee of the Budget and Expenditure Committee by the end of the following month a written report comparing actual revenue and expenditures to budgeted revenue and expenditures for the preceding month.

b. The Chairman shall submit to the Budget and Expenditure Committee a semi-annual written report comparing actual revenue and expenditures to budgeted revenue and expenditures for the preceding six-month period. Such report shall

be submitted no later than sixty days following the close of the period.

c. The Chairman shall submit to the Budget and Expenditure Committee for its approval the name of the CPA firm which firm shall render an annual audit of the financial statements. Such audit report shall be submitted to the Budget and Expenditure Committee no later than September 30th of each year.

d. The Treasurer shall prepare and file all financial reports required by federal, state and local law, including payroll tax returns, income tax returns, and campaign reports.

Section 10.05

CONTROLLER. The Chairman shall employ full time an accountant who shall assume the duties and functions of a Controller and shall assist the Chairman in preparing all budgets and financial reports, maintain all accounting records and assist the Treasurer in preparing all reports required by law.

ARTICLE XI

Amendments

Section 11.01

Proposed amendments to the Standing Rules and Bylaws shall be submitted in writing to the Chairman, who shall refer them to the Rules Committee for consideration. The Rules Committee shall make a report on such proposed amendments to the next meeting of the Committee. Following a favorable report by the Rules Committee, such amendments may be approved by a majority vote of those voting or, in the absence of a favorable report by the Rules Committee, such amendments may be adopted by a two-thirds (⅔) vote of the voting members present. The Executive Committee may act upon such proposed amendments only under the provisions of Section 3.05(b).

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

ORDER EXTENDING TIME AND CONTINUING HEARING DATE

(March 18, 1984)

By leave of Court, a telephonic hearing on defendants' motion for an extension of time, from March 16, 1984, to April 9, 1984, within which to file their opposition to plaintiffs' motion for summary judgment was conducted on

March 12, 1984. Philip Hickok, Deputy County Counsel for the County of Los Angeles, participated on behalf of defendant, Robert Philibosian, District Attorney for Los Angeles County; Richard D. Martland, Chief Assistant Attorney General for the State of California; N. Eugene Hill, Assistant Attorney General; and Geoffrey L. Graybill, Deputy Attorney General participated on behalf of all other defendants who have not disclaimed involvement in the above-entitled action; James J. Brosnahan and Paul Dieseth participated on behalf of plaintiffs.

Defendants requested that the fourteen (14) days allowed by Local Rule 220-3 within which to file their opposition to defendants' motion for summary judgment be extended to thirty-five (35) days on the grounds that plaintiffs' moving papers are voluminous (roughly 350 pages of documentation, including 50 pages of legal memorandum, 25 declarations and 19 exhibits) and that response thereto by defendants on both legal and factual issues could not be accomplished without information available only through sources outside of government because none of the defendants have been involved in regulating or monitoring political party activities or prosecuting anyone in plaintiffs' circumstances in connection with participation in political activity. Defendants represented that the additional twenty-one (21) days are necessary to gather information needed to respond which is not available from the records and files of state and local government and to prepare adequate legal memoranda based on such information.

Plaintiffs opposed the motion on the ground that they desire resolution of the issues prior to the California primary elections to be held in June 1984.

Having heard the arguments of counsel and GOOD CAUSE appearing therefor, it is hereby ORDERED that:

1. Defendants' opposition to plaintiffs' motion for summary judgment may be served and filed by mail on or before March 26, 1984;

2. Plaintiffs' reply to defendants' opposition may be served and filed by mail on or before April 2, 1984;

3. The hearing on plaintiffs' motion for summary judgment and defendants' motion to dismiss shall be held on April 9, 1984, at 10:30 a.m. unless the Court by subsequent order sets another date which shall be no earlier than April 6, 1984;

4. After the hearing defendants may seek leave to introduce evidence into the record which was not available to them when they filed their opposition to plaintiffs' motion for summary judgment.

DATED: March 16, 1984.

/s/ MARILYN HALL PATEL
Judge of the United States
District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599 MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

ORDER RE DISCLAIMING DEFENDANTS

(March 2, 1984)

The Defendants William A. O'Malley, District Attorney of Contra Costa County; John M. Meehan, District Attorney of Alameda County; and Michael Nail, District Attorney of Solano County having answered by way of disclaimer and having requested that their counsel be excused from attendance at proceedings in this case and that the other parties be relieved from serving said defendants with any further notices or papers in this action save and excepting matters by which any monetary recovery is sought against any of said defendants or any of the Counties served by said defendants; and counsel for the plaintiffs and for the other defendants in this case having agreed to such request,

IT IS HEREBY ORDERED

1. Defendants O'Malley, Meehan, and Nail and their respective Counsel are excused from attendance at further proceedings in this action.

2. The parties to this case are excused from serving defendants O'Malley, Meehan and Nail and their respective counsel with any notices, or other papers in this action save and excepting matters by which any money recovery is sought against any of said defendants or any of the Counties served by them.

Dated: March 2, 1984.

/s/ MARILYN HALL PATEL
United States District Judge

JOHN K. VAN DE KAMP, Attorney General
of the State of California

N. EUGENE HILL
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PHILIBOSIAN, District Attorney,
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, et al.,

Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, et al.,

Defendants.

DEFENDANTS' STATUS CONFERENCE CERTIFICATE

Pursuant to local rule 235-3, defendants MARCH FONG EU, Secretary of State of the State of California, JOHN K. VAN DE KAMP, Attorney General of the State of California, ARLO SMITH, District Attorney of San Francisco County, LEO HIMMELSBACH, District Attorney of Santa Clara County, JACK E. SHELLEY, District Attorney of Placer County, and ROBERT PHILIBOSIAN, District Attorney of Los Angeles County, and after counsel for defendants and plaintiffs having conferred regarding the issues presented by rule 235-3, submit the following statements corresponding to the interrogatories of said Rule:

(a) *Service of Process of Parties Not Yet Served;*

Defendants acknowledge that sufficient service has been accomplished as to them, but have no knowledge as to whether other defendants have been properly served.

(b) *Jurisdiction and Venue;*

Defendants contend that the court is without jurisdiction to hear this case because no actual case or controversy between defendants or any of them and plaintiffs or any of them within the meaning of the jurisdictional prerequisites set forth in Article III of the United States Constitution is presented.

Moreover, defendants contend that the court would not have jurisdiction of this case pursuant to 28 U.S.C. 1331 or 28 U.S.C. 1343(3), or 42 U.S.C. 1983 or 28 U.S.C. 2201.

(c) *The Substance of Parties Claims and Defenses and the Definition of Genuinely Controverted Issues;*

The denials set forth in the answers of defendant Philibosian and defendants March Fong Eu, et al., define the genuinely controverted issues in this case and the defenses contemplated at this time are set forth in said answers.

(d) *Anticipated Motions;*

Defendants will file motions for dismissal based on lack of jurisdiction and failure to state a claim upon which relief can be granted. If necessary, defendants will also file motions for judgment on the pleadings and/or summary judgment.

(e) *Anticipated or Remaining Discovery, Including Limitations on Discovery*

Defendants request the court to issue a status conference order limiting discovery, pending resolution of its motions to dismiss for lack of jurisdiction and failure to state a claim upon which relief can be granted, to jurisdictional and standing issues only. Plaintiffs have already served requests for admissions and interrogatories regarding contentions on the merits on defendants March Fong Eu and John Van de Kamp. Said defendants have provided answers to the request for admissions and to the interrogatories. Preparation of those responses created an unwarranted burden on defendants and their counsel in light of the very preliminary stage of this litigation. Discovery with regard to the merits of the lawsuit will likely be protracted and burdensome so that none of the parties should be subjected to the expense and time commitments required for such discovery until it is determined that this matter is properly before the court.

(f) *Further Proceedings;*

Defendants request that if notwithstanding its anticipated motions for dismissal and/or summary judgment this case proceeds to trial on the merits, the court issue an order for another status conference after disposition of defendants' motions.

(g) and (h) *Special Procedures;*

Other than as set forth in the previous statements, defendants have no further suggestions regarding special procedures appropriate to this case at this time.

(i) *Prospects for Settlement;*

Unless it is ultimately determined that this case is properly before the court, there is no prospect for settlement. Even if it is determined that this case is properly before this court, the prospects for settlement are probably negligible because section 3.5 of Article III of the California Constitution precludes defendants from stipulating to the invalidity of state statutes.

(j) *Any Other Matters Which May be Conducive to the Just, Efficient and Economical Determination of the Action or Proceeding.*

Plaintiffs' second claim for relief, which is set forth at pages 23 through 35 of the First Amended Complaint, challenges the validity of section 6 of Article II of the California Constitution and section 37 of the California Elections Code which preclude official state party organizations from endorsing, supporting or opposing candidates in non-partisan elections. This prohibition on endorsements was first confirmed as the law of California in *Unger v. Superior Court* (1980) 102 Cal.App.3d 681

[162 Cal.Rptr. 611], hg. den., cert. den 449 U.S. 1131 (*Unger* I). *Unger* I was reaffirmed in *Unger v. Superior Court* (1983) 145 Cal.App.3d 50 [— Cal.Rptr. —] (*Unger* II). The California Supreme Court granted hearing in *Unger* II on November 14, 1983, and the matter appears on that Court's docket as S.F. No. 24659. Therefore, in the event that this court ultimately determines that this case is properly before it and proceeds to hear the case on the merits, defendants will request that the court abstain from exercising jurisdiction in light of the California Supreme Court's exercise of jurisdiction over the issue set forth in the second claim for relief and the possibly controlling implications of the court's resolution of that issue on the other two claims for relief set forth in the First Amended Complaint in this action.

DATED: Feb. 16, 1984.

Respectfully submitted,

JOHN K. VAN DE KAMP
Attorney General

N. EUGENE HILL
Assistant Attorney General

By /s/ GEOFFREY L. GRAYBILL
Deputy Attorney General

Attorneys for Defendants
MARCH FONG EU, et al.

DeWITT W. CLINTON, County
Counsel, County of
Los Angeles

By /s/ PHILIP W. HICKOK
Deputy County Counsel

Attorneys for ROBERT
PHILIBOSIAN, District
Attorney, County of Los Angeles

DECLARATION OF SERVICE BY MAIL
STATE OF CALIFORNIA, County of Los Angeles

Lucilla Barthel states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 648 Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 16th day of February, 1984, I served the attached DEFENDANTS' STATUS CONFERENCE CERTIFICATE upon all interested parties (See Attached List) by depositing a copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in a United States mail box in Los Angeles, California, addressed as follows:

SEE ATTACHED LIST

and that the person on whom said service was made (resides) (has his office) at a place where there is a delivery service by United States mail, and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Los Angeles, California

Dated: February 16, 1984

Lucilla Barthel

JAMES J. BROSNAHAN
CEDRIC C. CHAO
PAUL R. DIESETH
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Attorneys for Plaintifs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL;

Plaintiffs.

v.

MARCH FONG EU, Secretary of State
of the State of California;
JOHN VAN DE KAMP, Attorney General
of the State of California; ARLO
SMITH, District Attorney of
San Francisco County; ROBERT
PHILIBOSIAN, District Attorney
of Los Angeles County; JOHN J.
MEEHAN, District Attorney of
Alameda County; LEO HIMMELSBACH,
District Attorney of Santa Clara
County; MICHAEL NAIL, District
Attorney of Solano County; JACK E.
SHELLEY, District Attorney of
Placer County; and WILLIAM A.
O'MALLEY, District Attorney of
Contra Costa County,

Defendants.

FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF

(Filed December 5, 1983)

Plaintiffs SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE, LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE, ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE, SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE, SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE, PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA, BERT COFFEY, NANCY WALKER, LINDA POST, DOLPH ANDREWS, CAROLYN WALLACE, MARY KING, THOMAS ROMERO, MARY GINGELL, DAVID E.

STURROCK, WALTER LAYSON, MARY VAIL, ROY CHRISTMAN, JAMES FAY, NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL, SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL, and NATIONAL COMMITTEE FOR PARTY RENEWAL, complain of defendants, and each of them, and allege as follows:

JURISDICTION

1. This is an action brought by the plaintiffs for declaratory and injunctive relief, challenging on the basis of the United States Constitution certain provisions of the California Elections Code and of article II, section 6 of the California State Constitution. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. section 1331, 28 U.S.C. section 1343(3), 42 U.S.C. section 1983, 28 U.S.C. section 2201, and the United States Constitution, to redress the deprivation, under color of state law, or rights, privileges and immunities secured by the First and Fourteenth Amendments to the Constitution of the United States. Venue is proper in this Court under 28 U.S.C. section 1392(a).

PLAINTIFFS

2. Plaintiff SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE is the Democratic county central committee for the county of San Francisco, California, organized under and governed by division 7, part 2, chapter 4 of the California Elections Code (sections 8820-8945). Plaintiff LINDA POST is the chairperson of said Committee. Plaintiff MARY VAIL is an active member of said Committee and is also a member of both the

Democratic State Central Committee and that organization's Executive Committee.

3. Plaintiff SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE is the Republican county central committee for the county of San Francisco, California, organized under and governed by division 7, part 3, chapter 4 of the California Elections Code (sections 9320-9510). Plaintiff DOLPH ANDREWS is the chairperson of said Committee.

4. Plaintiff LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE is the Democratic county central committee for the county of Los Angeles, California, organized under and governed by division 7, part 2, chapter 4 of the California Elections Code (sections 8820-8945). Plaintiff CAROLYN WALLACE is the chairperson of said Committee.

5. Plaintiff ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE is the Democratic county central committee for the county of Alameda, California, organized under and governed by division 7, part 2, chapter 4 of the California Elections Code (sections 8820-8945). Plaintiff MARY KING is the chairperson of said Committee and is also a member of both the Democratic State Central Committee and that organization's Executive Committee.

6. Plaintiff SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE is the Democratic county central committee for the county of Santa Clara, California, organized under and governed by division 7, part 2, chapter 4 of the California Elections Code (sections 8820-8945). Plaintiff ROY CHRISTMAN was the chairperson of said Committee from January 1981 to January 1983, is presently an active member of said Committee, and serves as a member of the Democratic State Central Committee.

7. Plaintiff SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE is the Democratic county central committe for the county of Solano, California, organized under and governed by division 7, part 2, chapter 4 of the California Elections Code (sections 8820-8945).

8. Plaintiff PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE is the Democratic county central committee for the county of Placer, California, organized under and governed by division 7, part 2, chapter 4 of the California Elections Code (sections 8820-8945). Plaintiff THOMAS ROMERO is the chairperson of said Committee.

9. Plaintiff STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA is the state central committee of the Libertarian Party of California, a political party organized under and governed by division 7, part 6 of the California Elections Code (sections 9950-9956) and, pursuant to designation under section 9955, by division 7, part 5 of the Elections Code (sections 9750-9855). Plaintiff Libertarian State Central Committee is organized under and governed by division 7, part 5, chapter 3 of the California Elections Code (sections 9790-9823). Plaintiff MARY GINGELL is the chairperson of said State Central Committee.

10. Plaintiff BERT COFFEY was the chairperson of the Democratic State Central Committee from 1977 to

1979, is and has been an active member of the Democratic Party of California since 1948, and is presently a member of the Executive Committee of the California Democratic State Central Committee.

11. Plaintiff NANCY WALKER is and has been since January 1980 an elected member of the San Francisco County Board of Supervisors and is an active member of the California Democratic Party.

12. Plaintiff DAVID E. STURROCK is a resident of Santa Clara County, California and is a member of both the Santa Clara County Republican Central Committee and the Republican State Central Committee. Mr. Sturrock is a registered Republican and an active member of the California Republican Party.

13. Plaintiff WALTER LAYSON is a resident of Contra Costa County, California and was either an elected member or an alternate of the Contra Costa County Republican Central Committee from 1975 to October 1983. Mr. Layson is a registered Republican and an active member of the California Republican Party.

14. Plaintiff JAMES FAY is a resident of Alameda County, California and was, from 1972 to 1976, an elected member of the Alameda County Democratic Central Committee. Mr. Fay is a registered Democrat and an active member of the California Democratic Party.

15. Plaintiffs NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL and SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL are unincorporated associations of private citizens, dedicated to strengthening California political parties as participatory vehicles for the expression of the will of the citizenry. Said plaintiffs include among their memberships persons who are active members and leaders of their respective political party organizations.

16. Plaintiff NATIONAL COMMITTEE FOR PARTY RENEWAL is an unincorporated association of private citizens, including citizens of the state of California and members of California political parties, dedicated to strengthening American political parties. Said plaintiff includes among its membership persons who are active members and leaders of their respective political party organizations.

DEFENDANTS

17. Defendant MARCH FONG EU is the Secretary of State of the state of California. Secretary of State Eu is the chief elections officer of the state and, as such, has the responsibility to administer the Elections Code, and to see that the state election laws are enforced. If, at any time, Secretary of State Eu concludes that the state election laws are not being enforced, she has the responsibility to bring the violation to the attention of the Attorney General or the district attorney of the county wherein the violation occurred.

18. Defendant JOHN VAN DE KAMP is the Attorney General of the state of California. Attorney General Van de Kamp is the chief law officer of the state of California and, as such, has the responsibility to see that the laws of the state are uniformly and adequately enforced. Attorney General Van de Kamp has direct supervision over every district attorney and sheriff, and over other state law enforcement officers, in all matters

pertaining to the duties of their respective offices. Whenever in the opinion of Attorney General Van de Kamp any law of the state of California is not being adequately enforced in any county, it is his duty to prosecute any violations of that law over which the California Superior Courts have jurisdiction.

19. Defendant ARLO SMITH is the District Attorney for the City and County of San Francisco, California. District Attorney Smith is responsible for the prosecution of those criminal offenses alleged in paragraphs 38, 50, and 62 arising under California law and occurring within San Francisco County, California.

20. Defendant ROBERT PHILIBOSIAN is the District Attorney for the City and County of Los Angeles, California. District Attorney Philibosian is responsible for the prosecution of those criminal offenses alleged in paragraphs 38, 50, and 62 arising under California law and occurring within Los Angeles County, California.

21. Defendant JOHN J. MEEHAN is the District Attorney for the County of Alameda, California. District Attorney Meehan is responsible for the prosecution of those criminal offenses alleged in paragraphs 38, 50, and 62 arising under California law and occurring within Alameda County, California.

22. Defendant LEO HIMMELSBACH is the District Attorney for the County of Santa Clara, California. District Attorney Himmelsbach is responsible for the prosecution of those criminal offenses alleged in paragraphs 38, 50, and 62 arising under California law and occurring within Santa Clara County, California.

23. Defendant MICHAEL NAIL is the District Attorney for the County of Solano, California. District Attorney Nail is responsible for the prosecution of those criminal offenses alleged in paragraphs 38, 50, and 62 arising under California law and occurring within Solano County, California.

24. Defendant JACK E. SHELLEY is the District Attorney for the County of Placer, California. District Attorney Shelley is responsible for the prosecution of those criminal offenses alleged in paragraphs 38, 50, and 62 arising under California law and occurring within Placer County, California.

25 Defendant WILLIAM A. O'MALLEY is the District Attorney for the County of Contra Costa, California. District Attorney O'Malley is responsible for the prosecution of those criminal offenses alleged in paragraphs 38, 50, and 62 arising under California law and occurring within Contra Costa County, California.

GENERAL ALLEGATIONS

26. Our form of government in the United States is built on the premise that all citizens and the political parties to which they belong shall have the right to engage in political expression and association. These rights, grounded in the equally inalienable rights of speech and assembly, are secured by the First Amendment to the United States Constitution.

27. The First Amendment affords broad protection to political expression. This protection extends not only to the political parties and their adherents, but also to

the recipients of that expression. This broad scope is necessary to ensure the unfettered interchange of ideas, especially the interchange of different views of political candidates. In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for public office is essential, because the candidates who are elected will inevitably shape the course that we follow as a society.

28. The freedom to associate with and to act collectively through the political party of one's choice is an equally integral part of the First Amendment. Political parties have been and are the major vehicle for the collective formulation, articulation, and advancement of political ideas and programs. Political parties thereby promote active competition in political ideas and governmental policies, which is necessary to a democracy. Free and strong political parties are necessary for effective citizen participation in government, and for accountability of government to its citizenry. Thus, significant burdens on a political party's ability to express the will of its adherents strikes at the core of our political process and our First Amendment freedoms.

29. California political parties and their adherents enjoy these constitutionally protected right of political expression and political association. These First Amendment freedoms are protected by the due process and equal protection clauses of the Fourteenth Amendment from infringement by any state.

30. The state of California has substantially burdened these constitutionaliy protected freedoms by depriving the political parties' state conventions, state central committees, and county central committees, and their respective adherents, of the right to endorse, support, or oppose political candidates in direct primary and nonpartisan elections. By depriving the parties of the basic right to speak out on political candidates, the state has prevented the parties from having any meaningful influence in the process leading to the selection of (a) their own respective candidates for statewide executive or legislative branch offices, or (b) officials in local nonpartisan offices which in turn are the entry level positions for higher partisan offices. Moreover, by prohibiting political parties from speaking out on political candidates, the state deprives the electorate of relevant and important information not otherwise available.

31. The state of California has also substantially burdened these constitutionally protected freedoms by imposing a burdensome organizational structure upon the parties which, *inter alia*, prevents significant grass roots participation in the selection of state central committee members, limits state central committee chairpersons to two-year terms, mandates the time and place of committee meetings, and sets a ceiling on certain party dues. By prescribing this unnecessarily burdensome party structure, the state has prevented integration of local party members into a representative statewide organization, guaranteed discontinuity of leadership, imposed arbitrary meeting rules, and restricted the parties' ability to raise funds.

32. These broad restrictions on the plaintiffs' First Amendment rights of speech and association have seriously weakened and debilitated the state political parties.

The resulting ineffectiveness of the parties discourages grass roots participation, hinders the collective formation of political ideas and programs, makes it very difficult for parties to recruit, train, and support qualified candidates who will advance these ideas and programs, and diminishes the parties' unique ability to hold elected officials accountable if they fail to support such ideas and programs. In short, the broad restrictions placed on the parties and their adherents by the State of California substantially burden the exercise of their First Amendment rights of political expression and political association. Furthermore, the State of California does not impose the complained-of provisions upon private associations such as political clubs, political action committees, or candidate campaign committees, and therefore the equal protection clause of the Fourteenth Amendment is violated.

33. California's statutory scheme of regulation of state political parties is set out in the California Elections Code (the "Elections Code"). Plaintiffs are unavoidably bound by and subject to this pervasive statutory scheme by virtue of sections 8500, 8776, 8940, 9000, 9276, 9440, 9819, and 9810 of the Elections Code. These sections require the California Democratic, Republican, and Libertarian parties to conduct their party campaigns and activities through the statutorily created state central committees and county central committees. These organizations are directly subject to the unconstitutional restrictions set forth in detail below.

34. At all times material to this action, the defendants are or would be acting knowingly and under color of state law within the scope of their employment as officers of the state.

FIRST CLAIM FOR RELIEF

[Joined in by plaintiffs San Francisco County Democratic Central Committee, Alameda County Democratic Central Committee, Santa Clara County Democratic Central Committee, Placer County Democratic Central Committee, State Central Committee of the Libertarian Party of California, Bert Coffey, Linda Post, Mary King, Thomas Romero, Mary Gingell, David E. Sturrock, Walter Layson, Mary Vail, Roy Christman, James Fay, Northern California Committee for Party Renewal, Southern California Committee for Party Renewal, and National Committee for Party Renewal]

35. Plaintiffs reallege and incorporate by reference paragraphs 1 through 34 of this Complaint.

36. Section 11702 of the Elections Code provides that the state conventions, the state central committees, and the county central committees are the official governing bodies of the political parties qualified to participate in the direct primary elections. The state conventions, the state central committees, and the county central committees of each political party are prohibited by section 11702 from endorsing, supporting, or opposing any candidate for nomination by that party for partisan office in the direct primary elections. Section 11702 does not prohibit any other organization or individual from endorsing, supporting, or opposing candidates in direct primary elections. Section 11702 is in full force and effect.

37. Section 29430 of the Elections Code provides that no candidate for nomination of a political party for a partisan office in the direct primary election shall claim,

nor shall any other person claim on his behalf, that he or she is the official candidate or the officially endorsed candidate of such political party. Section 29430 is in full force and effect.

38. Violations of sections 11702 and 29430 of the Elections Code are criminal offenses punishable by fine and potential imprisonment under section 29430 of the Elections Code.

39. Plaintiff county central committees, plaintiff county central committee members and chairpersons, plaintiff Libertarian State Central Committee, plaintiff members of state central committees and state executive committees, and plaintiff individual party members are informed and believe that if they endorse, support, or oppose any candidate for nomination in the direct primary elections or participate in such a process, the defendants, as provided by law, will attempt enforcement of sections 11702 and 29430 of the Elections Code, absent an order or judgment from a court prohibiting defendants from doing so. Plaintiff county central committee members and chairpersons, plaintiff members of state central committees and state executive committees, and plaintiff individual party members are informed and believe that if they participate within their respective party organizations in such an endorsement process, the defendants, as provided by law, will attempt enforcement of sections 11702 and 29430 of the Elections Code, absent an order or judgment from a court prohibiting defendants from doing so.

40. Sections 11702 and 29430 of the Elections Code, the knowledge that disobedience of these provisions is

prohibited, and the threat of enforcement of these provisions, have caused and will continue to cause plaintiff county central committees, plaintiff Libertarian State Central Committee, plaintiff county central committee members and chairpersons, plaintiff members of state central committees and state executive committees, and plaintiff individual party members not to endorse, support, or oppose candidates in the direct primary elections, or to participate in such a process. In short, sections 11702 and 29430 prevent plaintiffs from exercising their rights of assembly, association, and speech and thus substantially burden these rights.

41. By causing plaintiff party organizations and their adherents not to endorse, support, or oppose candidates in direct primaries, the state has severely circumscribed its citizens' ability to associate together to express their political will and has severely limited the ability of their favored candidates or programs to receive the benefit of their support.

(a) Sections 11702 and 29430 of the Elections Code prevent plaintiffs San Francisco, Alameda, Santa Clara, and Placer County Democratic Central Committees, plaintiff Libertarian State Central Committee, and their respective adherents, from favoring those candidates who support their goals, ideals, and programs, or opposing those candidates who disagree with or have been unfaithful to these same goals, ideals, and programs. Said plaintiff party organizations may not argue against a particular candidate's stance on a critical issue nor attempt to persuade the voters that because of that stance, a different candi-

date deserves their vote. Thus, plaintiff party organizations have no voice in determining who their candidates shall be and are unable to formuiate or to effectively advocate their adherents' programs. Plaintiff party organizations are left weak and impotent, and have become ineffective bodies unable to fulfill their function as the major vehicles for the collective articulation and advancement of political beliefs.

(b) Because of sections 11702 and 29430, plaintiffs Linda Post, Mary King, and Thomas Romero, in their capacities as chairpersons of the San Francisco, Alameda, and Placer County Democratic Central Committees, respectively; plaintiff David E. Sturrock, in his capacity as a member of the Santa Clara County Republican Central Committee; plaintiffs Mary Vail and Roy Christman, in their capacities as members of the San Francisco and Santa Clara County Democratic Central Committees, respectively; plaintiff Mary Gingell, in her capacity as chairperson of the Libertarian State Central Committee; plaintiff Walter Layson, in his capacity as a registered Republican and former member of the Contra Costa County Republican Central Committee; plaintiffs Bert Coffey, Mary Vail, Mary King, and Roy Christman, in their capacities as members of the Democratic State Central Committee and/or that organization's Executive Committee; and plaintiff David E. Sturrock, in his capacity as a member of the Republican State Central Committee, have each been unable to express their political will, both as individual party members and as chairpersons, members, and former members of official party organizations,

through the political party of their choice. These plaintiffs have found that without the ability to endorse, support, or oppose candidates, the parties and party organizations to which they belong cannot effectively pursue or advocate political positions which they and other party adherents wish to espouse. As a consequence, they have been unable to exercise their right to associate together with other party adherents to express their political beliefs.

(c) Plaintiff James Fay withdrew from the Alameda County Democratic Central Committee because, among other things, sections 11702 and 29430 prevented that Committee from expressing his views, the views of his fellow Committee members, or the views of other party adherents regarding various candidates in direct primary elections. The Alameda County Democratic Central Committee thus could not and does not fulfill plaintiff Fay's need to speak out on the candidates who were and are attempting to be the representatives of his party in the general election.

(d) Plaintiffs Northern California Committee for Party Renewal, Southern California Committee for Party Renewal, and National Committee for Party Renewal include among their memberships persons who, as active members and leaders of their respective political party organizations, have had their rights of speech, assembly, and association substantially burdened as a direct result of the complained-of provisions. Moreover, the complained-of provisions have significantly impaired the ability of plaintiffs Northern California Committee for Party Renewal and

Southern California Committee for Party Renewal to effectively engage in their usual educational, research, and advisory activities designed to restore the vitality of the California political parties and the confidence of the electorate in the political party system. In trying to undo the pernicious effects of the complained-of provisions, these plaintiffs have been forced to divert their resources from those activities.

42. Plaintiffs and each of them would endorse, support, or oppose candidates in the upcoming direct primary elections or participate in the endorsement process if such actions were not prohibited by sections 11702 and 29430 of the Elections Code.

(a) Plaintiff San Francisco County Democratic Central Committee would like the opportunity to endorse, support, or oppose candidates in direct primary elections, including candidates running for State Senate, State Assembly, and United States House of Representatives in June 1984 and in 1986, and would do so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Linda Post, the chairperson of said Central Committee, and plaintiff Mary Vail, one of that Central Committee's active members, would like to have the opportunity to act within their Central Committee to endorse, support, or oppose candidates in the direct primary elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(b) Plaintiff Alameda County Democratic Central Committee would like the opportunity to endorse,

support, or oppose candidates in direct primary elections, including candidates running for State Assembly, State Senate, and United States House of Representatives in June 1984 and in 1986, and would do so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Mary King, the chairperson of said Central Committee, would like to have the opportunity to act within her Central Committee to endorse, support, or oppose candidates in the direct primary elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(c) Plaintiff Santa Clara County Democratic Central Committee would like the opportunity to endorse, support, or oppose candidates in direct primary elections, including candidates running for State Senate, State Assembly, and United States House of Representatives in June 1984 and in 1986, and would consider doing so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Roy Christman, the former chairperson and a present active member of said Central Committee, would like to have the opportunity to act within his Central Committee to endorse, support, or oppose candidates in the direct primary elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(d) Plaintiff Placer County Democratic Central Committee would like the opportunity to endorse, support, or oppose candidates in direct primary elections, including candidates running for State Assem-

bly, State Senate, and United States House of Representatives in June 1984 and in 1986, and would do so but for the existensce and threat of enforcement of the complained-of provisions. Plaintiff Thomas Romero, the chairperson of said Central Committee, would like to have the opportunity to act within his Central Committee to endorse, support, or oppose candidates in the direct primary elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(e) Plaintiff Libertarian State Central Committee would like the opportunity to endorse, support, or oppose candidates in direct primary elections, including candidates running for United States House of Representatives in June 1984 and in 1986, and would do so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Mary Gingell, the chairperson of said State Central Committee, would like to have the opportunity to act within her State Central Committee to endorse, support, or oppose candidates in the direct primary elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(f) Plaintiff David E. Sturrock would like the Santa Clara County Republican Central Committee to have the opportunity to endorse, support, or oppose candidates in direct primary elections, including candidates running for United States House of Representatives, State Senate, and State Assembly in June 1984 and in 1986, and would encourage and contribute

to this endorsement process but for the existence and threat of enforcement of the complained-of provisions.

(g) Plaintiff Walter Layson would like the Contra Costa County Republican Central Committee to have the opportunity to endorse, support, or oppose candidates in direct primary elections, including candidates running for United States House of Representatives and State Senate in June 1984 and in 1986, and would encourage and contribute to this endorsement process but for the existence and threat of enforcement of the complained-of provisions.

(h) Plaintiff James Fay would like the Alameda County Democratic Central Committtee to have the opportunity to endorse, support, or oppose candidates in direct primary elections, including candidates running for the above-described races that affect Alameda County, and would encourage and contribute to this endorsement process but for the existence and threat of enforcement of the complained-of provisions.

43. Endorsements must be circulated for a reasonable period of time prior to an election if they are to serve their functions of informing and educating the electorate of the endorsing party's views. The process of evaluating and identifying candidates for endorsement requires additional time. Because of these timing considerations, and because the plaintiffs wish to issue or participate in issuing endorsements for the June 1984 direct primary elections, plaintiffs would soon initiate the process of evaluating and endorsing candidates but for the existence and threat of enforcement of the complained-of provisions.

44. There are no sufficiently compelling legitimate state interests requiring the restrictions contained in sections 11702 and 29430 of the Elections Code. Even if such state interests did exist, the means chosen to advance such interests are not the least intrusive alternatives available. Sections 11702 and 29430 of the Elections Code thus violate the First Amendment to the United States Constitution and the due process clause of the Fourteenth Amendment to the United States Constitution. By regulating only official party organizations, and by substantially burdening the plaintiffs' First Amendment rights of speech and association, sections 11702 and 29430 of the Elections Code also violate the equal protection clause of the Fourteenth Amendment.

SECOND CLAIM FOR RELIEF

[Joined in by plaintiffs San Francisco County Democratic Central Committee, San Francisco County Republican Central Committee, Los Angeles County Democratic Central Committee, Alameda County Democratic Central Committee, Santa Clara County Democratic Central Committee, Solano County Democratic Central Committee, State Central Committee of the Libertarian Party of California, Bert Coffey, Nancy Walker, Linda Post, Dolph Andrews, Carolyn Wallace, Mary King, Mary Gingell, David E. Sturrock, Walter Layson, Mary Vail, Roy Christman, James Fay, Northern California Committee for Party Renewal, Southern California Committee for Party Renewal, and National Committee for Party Renewal]

45. Plaintiffs reallege and incorporate by reference paragraphs 1 through 44 of this Complaint.

46. Section 6 of article II of the California Constitution provides that school, county, and city offices among others, shall be nonpartisan.

47. Section 26 of article I of the California Constitution provides that all provisions of the California Constitution are "mandatory and prohibitory, unless by express words they are declared to be otherwise." Thus, disobendience of section 6 of article II of the California Constitution is expressly prohibited.

48. Section 37 of the Elections Code defines "nonpartisan office" as an office for which no party may nominate a candidate, and provides further that school, county, and municipal offices, among others, are nonpartisan offices.

49. Section 6 of article II of the California Constitution and section 37 of the Elections Code have both been interpreted by the California state judiciary as preventing the official state political party organizations from endorsing, supporting, or opposing candidates in nonpartisan elections. Plaintiffs are informed and believe and on that basis allege that section 6 of article II of the California Constitution and section 37 of the Elections Code have not been interpreted by the California state judiciary as preventing any other organization or individual from endorsing, supporting, or opposing candidates in nonpartisan elections. Section 6 of article II of the California Constitution and section 37 of the Elections Code are in full force and effect.

50. In addition, violations of section 6 of article II of the California Constitution and of section 37 of the Elec-

tions Code are criminal offenses punishable by fine and potential imprisonment under section 29102 of the Elections Code, which is in full force and effect.

51. Plaintiff county central committees and plaintiff Libertarian State Central Committee are informed and believe that if they endorse, support, or oppose candidates in nonpartisan elections for school, county, or city offices, the defendants, as provided by law, will attempt enforcement of section 37 of the Elections Code and section 6 of article II of the California Constitution, absent an order or judgment from a court prohibiting defendants from doing so. Plaintiff county central committee members and chairpersons, plaintiff members of state central committees and state executive committees, and plaintiff individual party members are informed and believe that if they participate within their respective party organizations in such an endorsement process, the defendants, as provided by law, will attempt enforcement of sections 11702 and 29430 of the Elections Code, absent an order or judgment from a court prohibiting defendants from doing so.

52. Plaintiff Nancy Walker, a future candidate for nonpartisan office, is informed and believes that if she seeks the endorsement or support of her party in a nonpartisan election, the defendants, as required by law, will attempt enforcement of section 37 of the Elections Code and of section 6 of article II of the California Constitution, absent an order or judgment from a court prohibiting defendants from doing so.

53. Section 37 of the Elections Code and section 6 of article II of the California Constitution, the knowledge

that disobedience of these provisions is prohibited, and the threat of enforcement of these provisions have caused and will continue to cause plaintiff county central committees, plaintiff Libertarian State Central Committee, plaintiff county central committee members and chairpersons, plaintiff members of state central committees and state executive committees, and plaintiff individual party members not to endorse, support, or oppose candidates in nonpartisan elections for school, county, or city offices, or to participate in such a process, and have caused and will continue to cause plaintiff Nancy Walker not to seek endorsement for such positions. In short, section 37 of the Elections Code and section 6 of article II of the California Constitution prevent plaintiffs from exercising their rights of assembly, association, and speech and thus substantially burden these rights.

54. By causing plaintiff party organizations and their adherents not to endorse, support, or oppose candidates in nonpartisan elections and causing plaintiff candidate not to seek such endorsement or support, the state has severely circumscribed its citizens' ability to associate together to express their political will and has severely limited the ability of their favored candidates or programs to receive the benefit of their support.

(a) Section 37 of the Elections Code and section 6 of article II of the California Constitution prevent plaintiffs San Francisco, Los Angeles, Alameda, Santa Clara, and Solano County Democratic Central Committees, plaintiff San Francisco County Republican Central Committee, plaintiff Libertarian State

Central Committee, and their respective adherents, from favoring those candidates who support their goals, ideals, and programs, or opposing those candidates who disagree with or have been unfaithful to those same goals, ideals, and programs. Said plaintiff party organizations may not argue against a particular candidate's stance on a critical local issue nor attempt to persuade the voters that because of that stance, a different candidate deserves their vote. Plaintiff party organizations have no voice in determining who shall be elected to school, county, or city offices. Plaintiff party organizations are left weak and impotent, and have become ineffective bodies unable to fulfill their function as the major vehicle for the collective articulation and advancement of political beliefs.

(b) Because of the complained-of provisions, plaintiffs Linda Post, Carolyn Wallace, and Mary King, in their capacities as chairpersons of the San Francisco, Los Angeles, and Alameda County Democratic Central Committees, respectively; plaintiff Dolph Andrews, in his capacity as chairperson of the San Francisco County Republican Central Committee; plaintiff David E. Sturrock, in his capacity as a member of the Santa Clara County Republican Central Committee; plaintiffs Mary Vail and Roy Christman, in their capacities as members of the San Francisco and Santa Clara County Democratic Central Committees, respectively; plaintiff Mary Gingell, in her capacity as chairperson of the Libertarian State Central Committee; plaintiff Walter Layson, in

his capacity as a registered Republican and former member of the Contra Costa County Republican Central Committee; plaintiffs Bert Coffey, Mary Vail, Mary King, and Roy Christman, in their capacities as members of the Democratic State Central Committee and/or that organization's Executive Committee; and plaintiff David E. Sturrock, in his capacity as a member of the Republican State Central Committee, have each been unable to express their political will, both as individual party members and as chairpersons, members, and former members of official party organizations, through the political party of their choice. These plaintiffs have found that without the ability to endorse, support or oppose candidates, the parties and party organizations to which they belong cannot effectively pursue or advocate political positions which they and other party adherents wish to espouse. As a consequence, they have been unable to exercise their right to associate together with other party adherents to express their political beliefs.

(c) Because of the complained-of provisions, plaintiff Nancy Walker, a former and future candidate for the Board of Supervisors in the City and County of San Francisco, has been and will be unable to seek the endorsement or support of her party in her campaigns. This has hindered and will hinder her ability to raise funds or to mount an effective campaign. It has also hindered and will hinder her in promoting the issues that she believes in and that she would like her party to endorse.

(d) Plaintiff James Fay has been discouraged from rejoining the Alameda County Democratic Central Committee because, among other things, the complained-of provisions prevent that Committee from expressing his views, the views of his fellow Committee members, or the views of other party adherents toward various nonpartisan candidates. The Alameda County Democratic Central Committee thus could not and does not fulfill plaintiff Fay's need to speak out on the candidates who are competing for nonpartisan posts.

(e) Plaintiffs Northern California Committee for Party Renewal, Southern California Committee for Party Renewal, and National Committee for Party Renewal include among their memberships persons who, as active members and leaders of their respective political party organizations, have had their rights of speech, assembly, and association substantially burdened as a direct result of the complained-of provisions. Moreover, the complained-of provisions have significantly impaired the ability of plaintiffs Northern California Committee for Party Renewal and Southern California Committee for Party Renewal to effectively engage in their usual educational, research, and advisory activities designed to restore the vitality of the California political parties and the confidence of the electorate in the political party system. In trying to undo the pernicious effects of the complained-of provisions, those plaintiffs have been forced to divert their resources from these activities.

55. Plaintiffs and each of them would endorse, support, or oppose candidates in upcoming nonpartisan elections, seek endorsement or support, or participate in the endorsement process if such actions were not prohibited by section 37 of the Elections Code and section 6 of article II of the California Constitution.

(a) Plaintiff San Francisco County Democratic Central Committee would like the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for the County Board of Supervisors, BART Board, and Board of Education in November 1984 and 1986, and for City Treasurer and City Attorney in November 1985, and would do so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Linda Post, the chairperson of said Central Committee, and plaintiff Mary Vail, one of that Central Committee's active members, would like to have the opportunity to act within their Central Committee to endorse, support, or oppose candidates in the nonpartisan elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(b) Plaintiff San Francisco County Republican Central Committee would like the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for the County Board of Supervisors, Board of Education, BART Board, and the San Francisco Community College District Board of Directors in November 1984 and 1986, and for City Treasurer and City Attorney in

November 1985, and would do so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Dolph Andrews, chairperson of said Central Committee, would like to have the opportunity to act within his Central Committee to endorse, support, or oppose candidates in the nonpartisan elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(c) Plaintiff Los Angeles County Democratic Central Committee would like the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for the County Board of Supervisors and for District Attorney in June 1984, and for City Council in 1985, and would do so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Carolyn Wallace, the chairperson of said Central Committee, would like to have the opportunity to act within her Central Committee to endorse, support, or oppose candidates in the nonpartisan elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(d) Plaintiff Alameda County Democratic Central Committee would like the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for the County Board of Supervisors in June 1984 and in 1986, and would do so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Mary King, the chairperson of said Central Committee, would like to have the opportunity to act within her Central Committee to endorse, support, or oppose candidates in the nonpartisan elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(e) Plaintiff Santa Clara County Democratic Central Committee would like the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for city councils in April and June 1984 and in 1985 and 1986, and for the County Board of Supervisors in June 1984 and in 1986, and would consider doing so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Roy Christman, former chairperson and present active member of said Central Committee, would like to have the opportunity to act within his Central Committee to endorse, support, or oppose candidates in the nonpartisan elections set out above and would do so but for the existence and threat of enforcement of the complained-of provisions.

(f) Plaintiff Solano County Democratic Central Committee would like the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for the County Board of Supervisors in June 1984, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(g) Plaintiff Libertarian State Central Committee and its adherents would like the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for city coun-

cils and school boards in 1984, 1985, and 1986, and for County Boards of Supervisors in 1984 and 1986, and would do so but for the existence and threat of enforcement of the complained-of provisions. Plaintiff Mary Gingell, the chairperson of said State Central Committee, would like to have the opportunity to act within her Central Committee to endorse, support, or oppose candidates in the nonpartisan elections set out above, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(h) Plaintiff Nancy Walker would like to seek the endorsement of her political party in her race for the Board of Supervisors of the County of San Francisco to be held in 1986, and would do so but for the existence and threat of enforcement of the complained-of provisions.

(i) Plaintiff David E. Sturrock would like the Santa Clara County Republican Central Committee to have the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for city councils and school boards in 1984, 1985, and 1986, and for the County Board of Supervisors in 1984 and 1986, and would encourage and contribute to this endorsement process but for the existence and threat of enforcement of the complained-of provisions.

(j) Plaintiff Walter Layson would like the Contra Costa County Republican Central Committee to have the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for the County Board of Supervisors

in 1984 and 1986 and for District Attorney and School Superintendent in 1986, and would encourage and contribute to this endorsement process but for the existence and threat of enforcement of the complained-of provisions.

(k) Plaintiff James Fay would like the Alameda County Democratic Central Committee to have the opportunity to endorse, support, or oppose candidates in nonpartisan elections, including candidates running for the above-described races that affect Alameda County, and would encourage and contribute to this endorsement process but for the existence and threat of enforcement of the complained-of provisions.

56. Endorsements must be circulated for a reasonable period of time prior to an election if they are to serve their function of informing and educating the electorate of the endorsing party's views. The process of evaluating and identifying candidates for endorsement requires additional time. Because of these timing considerations, and because plaintiffs wish to issue or participate in issuing endorsements for April and June 1984 nonpartisan elections, plaintiffs would soon initiate the process of evaluating and endorsing candidates but for the existence and threat of enforcement of the complained-of provisions.

57. There are no sufficiently compelling legitimate state interests requiring the restrictions contained in section 37 of the Elections Code and section 6 of article II of the California Constitution. Even if such state interests did exist, the means chosen to advance such interests are not the least intrusive alternatives available. Section 37 of the Elections Code and section 6 of article II of the

California Constitution thus violate the First Amendment to the United States Constitution and the due process clause of the Fourteenth Amendment to the United States Constitution. By regulating only official party organizations, and by substantially burdening plaintiffs' First Amendment rights of speech and association, section 37 of the Elections Code and section 6 of article II of the California Constitution also violate the equal protection clause of the Fourteenth Amendment.

THIRD CLAIM FOR RELIEF

[Joined in by plaintiffs San Francisco County Democratic Central Committee, San Francisco County Republican Central Committee, Alameda County Democratic Central Committee, Santa Clara County Democratic Central Committee, Solano County Democratic Central Committee, Placer County Democratic Central Committee, State Central Committee of the Libertarian Party of California, Bert Coffey, Linda Post, Dolph Andrews, Thomas Romero, Mary Gingell, David E. Sturrock, Walter Layson, Mary Vail, Roy Christman, James Fay, Northern California Committee for Party Renewal, Southern California Committee for Party Renewal, and National Committee for Party Renewal]

58. Plaintiffs reallege and incorporate by reference paragraphs 1 through 57 of this Complaint.

59. The State of California imposes many other regulations on state political parties in addition to those set out above. These other statutes govern, *inter alia*, the composition and selection of the official party committees, the terms of the party officers, the time and place of committee meetings, and the dues the parties may impose.

60. Although a state may regulate illegal acts, such as racial discrimination, sexual discrimination, bribery, or fraud, statutes which otherwise prescribe the internal workings of a political party are violative of the protections afforded by the First Amendment to the United States Constitution. A party's freedom to choose a method of governance that seems best calculated to strengthen the party and advance its programs and interests deserves and receives the protection of the United States Constitution. The State of California, however, has intruded into the internal workings of the California Democratic, Republican, and Libertarian Parties, preventing these parties and their adherents from choosing their own methods of governance and organization.

61. The State of California interferes with the internal workings of these political parties by means of the following sections of the Elections Code, all of which are in full force and effect.

(a) Sections 8660, 8661, 8663, 8664, 8665, 8667, and 8669 set forth who shall be members of the Democratic State Central Committee and mandate the manner in which they are chosen or appointed. Pursuant to these sections, the State Central Committee is substantially controlled by members other than those selected by Democratic County Central Committees or Assembly district caucuses. Sections 9160, 9160.5, 9161, 9161.5, 9162, 9163, and 9164 set forth who shall be members of the Republican State Central Committee and mandate the manner in which they are chosen or appointed. Pursuant to these sections, neither the Republican County Central Committees nor

any other local grass roots organization may select any State Central Committee members, except that the County Central Committee chairpersons are members of the State Committee. These provisions stifle grass roots input by active party members, including individual plaintiffs, and prevent the members of the California Democratic and Republican Parties from adopting their own method of selection which would best serve their interests and best represent the collective beliefs of their parties. These provisions have greatly weakened the official organizations of California political parties, including plaintiffs, and have greatly diminished the ability of local party activists, including individual plaintiffs and members of the Northern and Southern California and National Committees for Party Renewal, to serve on and to provide input to the State Central Committee.

(b) Section 9274 restricts the chairpersons of the Republican State Central Committee to two-year terms and prohibits such persons from succeeding themselves. Section 9816 similarly restricts the chairperson of the Libertarian State Central Committee. These provisions guarantee that there will be no continuity of leadership of these State Central Committees and, because of the limited length of the term, severely restrict the ability of any chairperson to formulate or implement a coherent political program. This directly hinders the Republican and Libertarian Parties, their official organizations, and their individual party members, including individual plaintiffs and members of the Northern and Southern California

and National Committees for Party Renewal, from furthering their political objectives and substantially burdens their constitutional right to associate together in the manner they deem best.

(c) Section 8710 mandates the time and place of the Democratic State Central Committee meetings. Sections 9210 and 9800 prescribe similar time and place requirements for the Republican and Libertarian State Central Committees, respectively. These requirements are arbitrary and burdensome to individual State Central Committee members and are an unwarranted and unnecessary intrusion into the internal workings of the Democratic, Republican, and Libertarian Party organizations.

(d) Sections 8920 and 8921 dictate time and place requirements for meetings of the Democratic County Central Committees. Sections 9420 and 9421 set forth similar requirements for the Republican County Central Committees. Sections 9830, 9840, and 9841 contain analogous provisions for the Libertarian County Central Committees. These requirements are arbitrary and burdensome to individual County Central Committee members and are an unwarranted and unnecessary intrusion into the internal workings of the Democratic, Republican, and Libertarian Party organizations.

(e) Section 9275 decrees that the Republican State Central Committee shall not impose dues of more than $24 on the members of that Committee. Sections 9818 and 9855 provide that the Libertarian

State Central Committee and the Libertarian County Central Committees, respectively, shall not impose dues of more than $24 on members of these Committees. These provisions restrict the ability of these Committees and their adherents to raise funds for their own activities and thus limit their freedom to engage in such activities. As a direct result, these Committees and their adherents are limited in their freedom to associate together to advance shared beliefs.

(f) Plaintiffs Northern California Committee for Party Renewal, Southern California Committee for Party Renewal, and National Committee for Party Renewal include among their memberships persons who, as active members and leaders of their respective political party organizations, have had their rights of speech, assembly, and association substantially burdened as a direct result of the complained-of provisions. Moreover, the complained-of provisions have significantly impaired the ability of plaintiffs Northern California Committee for Party Renewal and Southern California Committee for Party Renewal to effectively engage in their usual educational, research, and advisory activities designed to restore the vitality of the California political parties and the confidence of the electorate in the political party system. In trying to undo the pernicious effects of the complained-of provisions, these plaintiffs have had to divert their resources from those activities.

62. Violations of these sections of the Elections Code are criminal offenses punishable by fine and potential imprisonment under section 29102 of the Elections Code, which is in full force and effect.

63. Plaintiffs are informed and believe that if they adopt and follow rules of internal governance of their own choosing which are contrary to the restrictive provisions set out in paragraph 61 above, the defendants, as provided by law, will attempt enforcement of these requirements, absent an order or judgment from a court prohibiting defendants from doing so.

64. The provisions set out in paragraph 61, the knowledge that disobedience of those requirements is prohibited, and the threat of enforcement of these provisions have caused and will continue to cause the plaintiff State Central and Executive Committee members, plaintiffs San Francisco, Alameda, Santa Clara, Solano, and Placer County Democratic Central Committees and their respective chairpersons and members, plaintiffs San Francisco County Republican Central Committee and its chairperson, plaintiffs Libertarian State Central Committee and its chairperson, and plaintiff individual party members not to deviate from the restrictive provisions set out in paragraph 61.

65. As a result of these restrictive provisions, the official organizations of the California political parties and the adherents of the various political parties are inhibited from organizing their parties' structure and from conducting their parties' affairs in a manner best suited to achieve the parties' objectives of serving as the collective vehicle for the articulation and advancement of political ideas. In short, plaintiffs' constitutionally protected rights of speech, assembly, and association have been and are substantially burdened.

66. Plaintiffs and each of them would recommend that some or all of these rules be abolished and replaced by different rules if that were allowed.

67. There are no sufficiently compelling legitimate state interests requiring the restrictions set forth in paragraph 61. Even if such state interests did exist, the means chosen to advance such interests are not the least intrusive alternatives available. The restrictions set forth in paragraph 61 thus violate the First Amendment to the United States Constitution and the due process clause of the Fourteenth Amendment to the United States Constitution. By regulating only official party organizations and by substantially burdening plaintiffs' First Amendment rights of speech and association, the restrictions set forth in paragraph 61 also violate the equal protection clause of the Fourteenth Amendment.

NATURE OF RELIEF

68. There is between the parties an actual controversy as set forth above. The plaintiffs are suffering irreparable injury by virtue of the defendants' threatened enforcement of sections 37, 8660, 8661, 8663, 8664, 8665, 8667, 8669, 8710, 8920, 8921, 9160, 9160.5, 9161, 9161.5, 9162, 9163, 9164, 9210, 9274, 9275, 9420, 9421, 9800, 9816, 9818, 9830, 9840, 9841, 9855, 11702, and 29430 of the Elections Code and of section 6 of article II of the California Constitution. The plaintiffs have no plain, adequate, or complete remedy to redress the wrongs and unlawful acts complained of other than this action for declaration of rights and injunction. Any other remedies to which plaintiffs can be remitted would be attended by such uncertainties and delays as to deny them substantial relief, would involve a multiplicity of suits, and would cause further irreparable injury, damage, and inconvenience to the plaintiffs. Unless the statutory provisions complained of are declared unconstitutional and their operation enjoined by this Court, the plaintiffs will be deprived of their rights as set forth above.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray that this Court enter judgment as follows:

1. A declaratory judgment declaring that sections 11702 and 29430 of the Elections Code are unconstitutional on their face or as applied.

2. Preliminary and permanent injunctive relief prohibiting the defendants from enforcing or seeking to enforce sections 11702 and 29430 of the Elections Code.

3. A declaratory judgment declaring that section 6 of article II of the California State Constitution and section 37 of the Elections Code, insofar as said provisions prohibit plaintiffs from endorsing, supporting, or opposing candidates for school, county, and city offices, are unconstitutional on their face or as applied.

4. Preliminary and permanent injunctive relief prohibiting the defendants from enforcing or seeking to enforce section 6 of article II of the California State Constitution and section 37 of the Elections Code, insofar as said provisions prohibit plaintiffs from endorsing, supporting, or opposing candidates for school, county, and city offices.

5. A declaratory judgment declaring that sections 8660, 8661, 8663, 8664, 8665, 8667, 8669, 8710, 8920, 8921, 9160, 9160.5, 9161, 9161.5, 9162, 9163, 9164, 9210, 9274, 9275, 9420, 9421, 9800, 9816, 9818, 9830, 9840, 9841, and 9855 of the Elections Code are unconstitutional on their face as applied.

6. Preliminary and permanent injunctive relief prohibiting the defendants from enforcing or seeking to enforce sections 8660, 8661, 8663, 8664, 8665, 8667, 8669, 8710, 8920, 8921, 9160, 9160.5, 9161, 9161.5, 9162, 9163, 9164, 9210, 9274, 9275, 9420, 9421, 9800, 9816, 9818, 9830, 9840, 9841, and 9855 of the Elections Code.

7. An award to the plaintiffs of the costs of this action, including reasonable attorneys' fees, pursuant to 42 U.S.C. section 1988.

8. Such other and further relief as the Court may deem just and proper.

Dated: December 5, 1983.

Respectively submitted,

JAMES J. BROSNAHAN
CEDRIC C. CHAO
PAUL R. DIESETH
MORRISON & FOERSTER

By /s/ James J. Brosnahan

Attorneys for Plaintiffs

PROOF OF SERVICE BY MAIL

(FRCivP 5(b))

I am employed with the law firm of MORRISON & FOERSTER, whose address is One Market Plaza, San Francisco, California 94105; and that I am not a party to the cause and that I am over the age of eighteen years.

That on the date hereof I served a copy of

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

on the following by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as follows:

See "Exhibit A"

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

EXECUTED at San Francisco, California, this 5th day of December, 1983.

Virginia Inferrera _____
(typed) (signature)

EXHIBIT A

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Deputy Attorney General
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Secretary of State March Fong Eu,
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and District Attorney
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CALIFORNIA CONSTITUTION:

Section 6 of article II of the Constitution of California prior to amendment in June, 1986

SEC. 6. Judicial, school, county, and city offices shall be nonpartisan.

Section 6 of article II of the Constitution of California as amended in June, 1986 by the voters of California

SEC. 6. *(a) All judicial,* school, county, and city offices shall be nonpartisan.

(b) No political party or party central committee may endorse, support, or oppose a candidate for nonpartisan office.

CALIFORNIA ELECTIONS CODE SECTIONS:

§ 37

"Nonpartisan office" means an office for which no party may nominate a candidate. Judicial, school, county, and municipal offices are nonpartisan offices.

§ 8660

The state central committee shall consist of:

(a) One member for each of the following elective officials:

(1) Governor.

(2) Lieutenant Governor.

(3) Treasurer.

(4) Controller.

(5) Attorney General.

(6) Secretary of State.

(7) All members of the State Board of Equalization.

(8) All Senators and Representatives of Congress from California.

(9) All members of the State Legislature.

(b) Members elected by county central committees pursuant to this part.

(c) Members appointed pursuant to this part.

(d) The national committeemen and national committeewomen of the party.

(e) Any person elected to fill a vacancy in the State Legislature in a special election.

(f) Such immediate past party officers as may be provided by party bylaws.

(g) Members elected by Assembly district caucuses pursuant to this part.

(h) The President of the California Democratic Council and the President of the Federation of Young Democrats.

(i) Former elected, nonjudicial statewide officeholders as described in Section 8660.3.

§ 8661

(a) Each officer named in subdivision (a) of Section 8660 who was nominated and elected as a candidate of the party and whose term of office extends beyond the first Monday in December in the case of legislators and the Monday after January 1 in the case of other officers next following the direct primary election, or the appointee or successor appointed, elected, or otherwise designated by law to fill a vacancy in the office of any such officer, shall be known as a "holdover member."

(b) Each candidate of the party in whose behalf nomination papers were filed and who was nominated at the direct primary election by that party shall be known as a "nominee member." Nominees for an office, the term of which extends beyond two years, are members of each succeeding state central committee until that following the direct primary election at which nominations for the office are again to be made. If a candidate is a "nominee member" in the year in which he or she is nominated, and is elected to the office at the succeeding general election, the candidate shall be considered a "holdover member" in the next odd-numbered year.

(c) One member shall be appointed pursuant to Section 8675 for each of the officers named in subdivision (a) of Section 8660 not represented by a "holdover member" nor by a "nominee member" of the party.

§ 8663

Each nominee member listed in subdivision (a) of Section 8660 shall appoint to membership on this committee voters as follows:

(a) Governor, Lieutenant Governor, Treasurer, Controller, Attorney General, Secretary of State, United States Senators from California, members of the State Board of Equalization, and State Senators shall each

appoint three voters, at least two of whom shall be of the opposite sex; and

(b) Representatives of Congress from California and Members of the State Assembly shall each appoint two voters, at least one of whom shall be of the opposite sex.

All appointments made pursuant to this section shall be absolute.

§ 8664

A "holdover member" or a "nominee member" who has been elected to an office under subdivision (a) of Section 8660 at the general election, or following any special election, shall appoint additional voters to membership on this committee, as follows:

(a) Governor, Lieutenant Governor, Treasurer, Controller, Attorney General, Secretary of State, United States Senators from California, members of the Board of Equalization, and State Senators, three additional voters, at least one of whom shall be of the opposite sex; and

(b) Representatives of Congress from California and Members of the State Assembly, three additional voters, at least two of whom shall be of the opposite sex.

All appointments made pursuant to this section shall be absolute.

§ 8665

Any person who is a member of this committee by virtue of having been elected to fill a vacancy in the State Legislature in a special election, shall within 60 days of the special election, appoint additional members to this committee in the same manner as holdover members and nominee members make such appointments.

§ 8667

Within 35 days following the regular statewide general election, each county central committee shall elect members to the state central committee as follows:

two members for the first 5,000 registered Democrats, and one member for each 25,000 registered Democrats or portion thereof, over 5,000. The number of registered Democrats shall be as of the most recent report of registration to the Secretary of State.

The members elected pursuant to this section shall be divided as equally as possible between men and women who are members of the county central committee and were elected at the preceding direct primary or who were appointed pursuant to Section 8873.

§ 8669

Within 35 days following the regular statewide general election, a caucus as provided in this section shall be convened in each Assembly district in the state by the Democratic nominee for the Assembly at the general election or by the nominee's designee. However, if the Assembly district is the residence of the Democratic State Senate nominee, or if none, of the holdover Democratic Senate nominee, the caucus shall be called by that person or his or her designee. If the Assembly district is the residence of more than one such person, in addition to the Assembly nominee, the caucus shall be called by the person whose senatorial district includes the greatest proportion of the registered voters of the Assembly district, or that person's designee. In the event of the failure of the appropriate person to call the caucus, the chair of the state central committee shall call the caucus.

The person calling the caucus shall be assisted by an Assembly district executive committee in setting the time and place of the caucus and the procedure to be followed at the caucus. The executive committee shall consist of all members of the state central committee who attained such membership by operation of law or by appointment after the preceding direct primary election and county central committee members elected in the preceding direct primary election residing in the district.

The person calling the caucus or the person's designee shall preside over the caucus as temporary chair until such time as a permanent chair is elected by the caucus.

Every registered Democrat as of the close of registration and residing in the district shall be entitled to attend and vote at the caucus. The executive committee and the person calling the caucus shall make every reasonable effort to make known to all registered Democrats in the district the time, place, and purpose of the caucus and their right to participate.

Each caucus shall elect five members to the state central committee. In addition, each caucus shall elect five alternates who shall serve as members in the event of vacancies. Alternates shall fill vacancies in the order based upon the number of votes received in the caucus. To the extent possible, persons elected shall be equally divided between men and women.

Any person seeking election to the state central committee shall, at least five days prior to the Assembly district caucus, deliver to the temporary chair a nomination paper subscribed to by the number of signers set forth in subdivision (c) of Section 6495. The nomination paper shall be in a form substantially similar to that which is set forth in Section 6494, except that the paper shall not be examined and certified by the county clerk. The county clerk shall not be required to prepare or distribute nomination papers to persons seeking election pursuant to this section.

The number of nomination papers which a person may sign shall not exceed the number of members that the caucus is entitled to elect to the state central committee.

The temporary chair or his or her designee shall be responsible for the examination and verification of all nomination papers.

Within five days following the Assembly district caucus, the person calling the caucus shall notify the chair of the state central committee and the Secretary of State in writing signed by him or her of the names and addresses of the persons elected to membership

on the state central committee and their alternates pursuant to this section.

§ 8710

This committee shall convene in Sacramento in the January after a general election on a weekend which shall be no later than the last full weekend of the month. The meeting shall begin no later than 10 o'clock a.m. on Saturday.

§ 8920

(a) Each committee shall meet in the courthouse at its county seat, upon call, which shall be given by the county clerk of the county and in quarters to be arranged or provided for by the county clerk of the county, on the second Monday after the first day in January following the direct primary election, unless the committee decides by majority vote to meet on the second Monday after the first day in July following the direct primary election and files a written memorandum of such decision with the county clerk before the direct primary election.

(b) Any decision by the committee to meet on the second Monday after the first day in July following the direct primary election shall cause later meetings of the committee to occur on the same day.

§ 8921

Notwithstanding the provisions of Section 8920, a committee in a county having a population in excess of 4,000,000 shall meet at its county seat in a centrally located public auditorium sufficient to accommodate its membership.

§ 9160

The state central committee shall consist of:

(a) One member for each of the following public officers:

(1) Governor.

(2) Lieutenant Governor.

(3) Treasurer.

(4) Controller.

(5) Attorney General.

(6) Secretary of State.

(7) All members of the State Board of Equalization.

(8) All Senators and Representatives of Congress from California.

(9) All Members of the State Legislature.

(b) The chairman of each county central committee of the party.

(c) Members appointed pursuant to this part.

(d) The national committeeman and national committeewoman of the party.

(e) Any person elected or appointed to fill a vacancy in a partisan office.

(f) The chairman, vice chairman, and the immediate past chairman of this committee.

(g) The president or chairman, as the case may be, of each statewide, volunteer organization chartered by the state central committee or by the Republican National Committee and approved for this purpose by the executive committee of the state central committee.

Volunteer organizations chartered exclusively by the Republican National Committee and subject to this section shall file an initial petition for approval with the executive committee of the state central committee at least six months prior to the first organizational meeting specified in Section 9210. Such approval, if granted, shall remain in effect indefinitely unless and until it is revoked by the executive committee.

§ 9160.5

The following are members of the state central committee:

(a) Each officer named in subdivision (a) of Section 9160 who was nominated and elected as a candidate

of the party and whose term of office extends beyond the first Monday in December in the case of legislators and the Monday after January 1 in the case of other officers next following the direct primary election, or the appointee or successor appointed, elected, or otherwise designated by law to fill a vacancy in the office of any such officer. These members are "holdover members."

(b) (1) Except as provided in paragraph (2), each candidate of the party in whose behalf nomination papers were filed and who was nominated at the direct primary election or at a special primary election by that party. These members are "nominee members." Nominees for an office the term of which extends beyond two years are members until the direct primary election at which nominations for the office are again to be made. If a nominee is elected to the office to which he was nominated at the succeeding general election, he shall be considered a "holdover member."

(2) (A) If the person most recently nominated to the Senate, Assembly, or House of Representatives received less votes for the particular office at the ensuing General Election than a write-in candidate for the same office, and the write-in candidate is elected to that office at that ensuing General Election, the write-in candidate shall, for the purposes of this part, be considered a "holdover member," provided that the write-in candidate's affidavit of registration reflects that that candidate has been affiliated with the party for at least 6 months prior to the General Election.

(B) The person described in subparagraph (A) who was nominated to legislative office or to the House of Representatives but who was not elected to the particular office shall be designated as a "nominee member." Any person designated as a "nominee member" pursuant to this subparagraph shall be entitled to all the rights and privileges as provided other nominee members of the committee.

(c) One member appointed for each of the officers named in subdivision (a) of Section 9160, not represented by a "holdover member" nor by a "nominee member" of the party. These members shall be chosen and appointed in the manner provided in subdivision (e) of this section. These members are "appointive members."

(d) (1) Except as provided in paragraph (2), if a person qualifies more than once to be a member that person shall be a member by virtue of the most recent qualification. The resulting vacancy shall be filled pursuant to subdivision (e).

(2) If a person qualifies more than once to be a member and one of the qualifications to the committee, which is not the most recent qualification, is by virtue of the person being a holdover member, that person shall be considered a holdover member. In this instance, the resulting vacancy shall be filled pursuant to subdivision (e).

(e) Vacancies in nominee or holdover memberships shall be filled as follows:

(1) If the vacancy occurs in a senatorial or Assembly district situated wholly within the limits of a single county, by appointment by the county central committee of the party in the county. Whenever such a vacancy occurs by virtue of the failure to nominate a person affiliated with the party, no person shall be chosen to fill the vacancy who does not reside in the senatorial or Assembly district involved.

(2) If the vacancy occurs in a senatorial or Assembly district comprising two or more counties, by appointment by the county central committee of the party in the county in which the disqualified or deceased member resided, if the vacancy is caused by disqualification or death, or in which the "holdover" or "nominee member" of the opposing party resides, if the vacancy is due to any other cause.

(3) If the vacancy occurs as to a member for a United States Senator from California or as to a member for any of the state officers named in subdivision (a) of Section 9160, by appointment by the state central committee.

(4) If the vacancy occurs as to a member for any Representative in Congress from California, by appointment by the state central committee of a voter who resides within the congressional district to be represented.

(f) A county central committee may authorize its chairman to appoint members to fill vacancies in the membership which the county central committee has power to fill.

§ 9161

A holdover member shall make appointments to the membership of this committee of one voter of the same sex and two voters of the opposite sex, and shall appoint five additional voters without regard to sex.

§ 9161.5

The national committeeman and national committeewoman of the party, and the chairman, vice chairman, and immediate past chairman of this committee, shall each appoint three voters to the membership of this committee, two of whom shall be of the opposite sex. Such appointment shall be in addition to any other appointments authorized by this chapter.

§ 9162

Appointive members and nominee members who were not elected at the general election shall appoint three voters to the membership of this committee, two of whom shall be of the opposite sex.

§ 9163

A chairman of a county central committee may appoint persons to membership on the state central committee meeting immediately following his election as chairman without regard to sex.

a. In counties containing three or more Assembly districts he may appoint three voters to membership.

b. In counties containing less than three Assembly districts but at least one entire Assembly district he may appoint two voters to membership.

c. In counties containing less than one entire Assembly district he may appoint one voter to membership.

§ 9164

Any person who is a member of this committee by virtue of having been elected or appointed to fill a vacancy in a partisan office, shall within 60 days of his election or appointment, appoint additional members to the committee in the same manner as holdover members make such appointments.

§ 9210

The first meeting of this committee shall convene at a suitable location in the City of Sacramento at 10 o'clock a.m. on a date designated by the chairman of the committee, but not less than 15 days nor more than 45 days after the organizational meetings of the county central committees. The location shall be designated by the executive committee of the state central committee, or, if the executive committee does not meet, by the chairman of the committee, and the Secretary of State shall be notified of the selection at least six weeks in advance of the meeting of the committee.

§ 9274

The chairman of this committee shall serve a two-year term but shall not succeed himself, and the chairmanship shall alternate each biennium between the northern and southern territories.

The southern territory consists of the following counties: Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura. The northern territory consists of the remaining counties.

§ 9275

This committee may prescribe dues to be paid by its members in the manner and by the time prescribed by vote of the majority of the members of the committee. The dues charged shall not exceed twenty-four dollars ($24) per year.

Any appointed member of this committee who fails to pay the dues prescribed by the committee may, upon first notifying the appointing member, be removed from the committee in the manner provided by the committee.

§ 9420

(a) Each committee shall meet in the courthouse at its county seat, upon call which shall be given by the county clerk of the county and in quarters to be arranged or provided for by the county clerk of the county, on the first Monday after the first day in January following the direct primary.

(b) If the day designated by subdivision (a) falls upon the same date as inauguration events following the election of a new Governor and if one or more members of the committee so requests, the meeting shall be called for the next following Monday.

Requests for postponement under this section shall be in writing and shall be served on the county clerk of the county no later than 15 days prior to the day designated under the provisions of subdivision (a).

§ 9421

Notwithstanding the provisions of Section 9420, a committee in a county having a population in excess

of 4,000,000 shall meet at its county seat in a centrally located public auditorium sufficient to accommodate its membership.

§ 9800

The state central committee shall hold its convention meeting biennially beginning at 10 a.m. on a Saturday and ending the following Sunday in August next following the direct primary election, as designated by the officers of the committee. The city in which such convention meeting is to be held shall be selected by the officers of the state central committee. The chairperson of the state central committee shall notify the Secretary of State no later than the first day of July next following the direct primary election of the date and location selected by the officers for the convention meeting of the state central committee.

§ 9816

The chairperson of the state central committee shall serve a two-year term but shall not succeed herself or himself, and the chairperson shall alternate each biennium between the northern and southern territories. The boundary between the northern and southern territories of the state shall be that latitudinal line coinciding with the northern boundaries of San Luis Obispo, Kern, and San Bernardino Counties.

§ 9818

This committee may prescribe dues to be paid by its members in the manner and by the time prescribed by vote of the majority of the members of the state central committee. The dues charged shall not exceed twenty-four dollars ($24) per year. Any member of this committee who fails to pay the dues prescribed by the committee may, upon one month's advance notice to that member, be removed from the state central committee.

§ 9830

In each county a county central committee shall be formed. At its first meeting on the second Tuesday in July following the direct primary election, a county central committee shall consist initially of those members of central committees who were elected at the most recent direct primary election and who reside in the county.

§ 9840

Each committee shall meet in the courthouse at its county seat, upon call, which shall be given by the county clerk of the county. The quarters shall be arranged or provided for by the county clerk of the county, on the second Tuesday in July following the direct primary election.

§ 9841

Notwithstanding the provisions of Section 9840, a committee in a county having a population in excess of 4,000,000 shall meet at its county seat in a centrally located public auditorium sufficient to accommodate its membership.

§ 9855

Each committee may establish annual dues not to exceed twenty-four dollars ($24) per year for members. The committee may remove members for nonpayment of dues.

§ 11702

The state convention, state central committee, and the county central committee in each county are the official governing bodies of a party qualified to participate in the direct primary election. The state convention, state central committee, and the county central committee in each county shall not endorse, support, or oppose, any candidate for nomination by that party for partisan office in the direct primary election.

§ 29102

Every person charged with the performance of any duty under the provisions of any law of this state relating to elections, who willfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, is, unless a different punishment is prescribed by this code, punishable by fine not exceeding one thousand dollars ($1,000) or by imprisonment in the state prison for 16 months or two or three years, or by both.

§ 29430

No candidate for nomination of a political party for a partisan office in the direct primary election shall claim, nor shall any other person claim on his behalf, that he or she is the official candidate or the officially endorsed candidate of such political party. A violation of this section by any person shall constitute a misdemeanor.

Supreme Court, U.S.
FILED
MAR 30 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1269

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1987

MARCH FONG EU, Secretary of State of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; and LEO HIMMELSBACH, District Attorney of Santa Clara County,

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

MOTION TO AFFIRM OR TO DISMISS

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QUESTIONS PRESENTED

1. Do state laws prohibiting political parties from endorsing candidates in primary elections and prescribing the composition of the parties' governing bodies substantially burden the parties' first amendment rights?

2. Does a state have a compelling interest in preventing a political party from engaging in a course of conduct that the state views as contrary to the party's best interests?

3. Does a state's interest in judicial enforcement of rules for internal party governance justify statutes prescribing the content of those rules?

4. Does a state's interest in the orderly conduct of general election campaigns justify a ban on primary election endorsements by political parties?

5. Is state regulation of political parties equivalent to self-governance for purposes of assessing whether the parties' first amendment rights are substantially burdened?

6. May a state restrict the exercise of a political party's first amendment rights on the ground that candidates for elective office can disaffiliate from the party and qualify for the general election ballot as independent candidates?

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

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Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

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MOTION TO AFFIRM OR TO DISMISS

STATEMENT OF THE CASE

By this motion, appellees respectfully request this Court summarily to affirm the decision below, or to dismiss this appeal for lack of a substantial federal question.

Appellees are seven county central committees of the California Democratic and Republican parties and their chairs, the state central committee of the California Libertarian party and its chair, and other organizations and individuals active in California politics. All appellees are named in the caption. Appellees were plaintiffs below in an action filed in the United States District Court for the Northern District of California on November 17, 1983, seeking declaratory and injunctive relief to secure their first amendment rights. A first amended complaint was filed on December 5, 1983. Appellants answered on December 15 and 16, 1983.

The first amended complaint contained three causes of action, two of which are presented on this appeal.[1] By their first cause of action, plaintiffs sought the right to endorse, support, or oppose candidates for nomination in direct party primary elections. They were prohibited from doing so under California Elections Code section 11702, enacted in 1963, which provides that the "state convention, state central committee, and the county central committee in each county shall not endorse,

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1 The District Court abstained on the second cause of action, which challenged state law restrictions on the right of political parties to endorse candidates in nonpartisan school, county or municipal office elections, in light of the pendency in the California Supreme Court of an appeal presenting similar issues. The California Supreme Court ultimately decided that state law did not prohibit such endorsements. *Unger v. Superior Court*, 37 Cal. 3d 612, 692 P.2d 238, 209 Cal. Rptr. 474 (1984). A ban on nonpartisan endorsements was subsequently proposed by the State Legislature and enacted by ballot initiative in June 1986.

support, or oppose, any candidate for nomination by that party for partisan office in the direct primary election" (II App. 302a).[2] In addition to the statutory restriction on endorsements, Elections Code section 29430 makes it a misdemeanor for any person to "claim . . . on . . . behalf [of a candidate for nomination of a political party for partisan office] that he or she is the official candidate or the officially endorsed candidate of such political party" (II App. 303a). These restrictions on preprimary endorsements are unique to California (I App. 45a).

By their third cause of action, plaintiffs sought the right to structure and conduct their internal political party affairs without intrusive and burdensome state interference. Among other restrictions challenged in the third cause of action are Elections Code provisions governing the composition and method of selection of the state central committees, and the length of the state central committee chairperson's term of office (II App. 277a-280a). Violations of these provisions are also subject to criminal prosecution. Cal. Elec. Code § 29102 (II App. 303a).

Plaintiffs contended below that these various state laws substantially burdened their first amendment rights of political expression and association. Because there were no compelling state interests justifying this substantial burden, these state laws were alleged to violate the first amendment.

On February 27, 1984, the District Court set the date for oral argument on cross-motions for summary judgment and a motion to dismiss that the parties indicated they intended to file. The competing motions were fully briefed and argued. In support of summary judgment, plaintiffs filed 28 declarations from the

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2 As used herein "I App." refers to Volume I of the Appendix to the Jurisdictional Statement, "II App." refers to Volume II of the Appendix to the Jurisdictional Statement, "Add." refers to the Addendum to Appellee's Motion to Affirm or to Dismiss filed herewith under separate cover, and "Juris. Stmt." refers to appellants' Jurisdictional Statement.

then-party chairs of each plaintiff central committee, prominent political scientists, and politicians within and without California.[3] Plaintiffs' declarations detailed the substantial burdens the challenged statutes placed upon plaintiffs' first amendment rights. These declarations established that the challenged Elections Code provisions have prevented political parties from developing effective leadership, have led to weakened party organizations, have deprived the electorate of valuable sources of information on primary candidates' qualifications, and have engendered serious voter confusion by preventing political parties from disavowing the views of organizations and candidates purporting incorrectly to represent the silenced parties' views. Plaintiffs' declarations established beyond doubt that plaintiff central committees would reform procedures for internal party governance and would endorse candidates in primary elections if permitted to do so.

Appellants, in opposition to summary judgment and in support of their cross-motion for summary judgment, submitted only one declaration — from Albert Rodda — that purported to address the first amendment issues (II App. 105a). As both the District Court and the Court of Appeals noted, "this affidavit consists of 'opinions . . . not based on facts, but on speculations'" (I App. 43a). The Rodda declaration failed to controvert plaintiffs' numerous declarations describing the impact that the challenged Elections Code provisions have on political parties (*id.* at 44a).

The District Court granted summary judgment for plaintiffs on April 9, 1984, as to the first cause of action and those portions of the third cause of action involving Elections Code

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3 Plaintiffs' declarations are cited extensively in the Court of Appeals' opinion (*see* I App. 1a). Representative declarations are reproduced as Addenda A-K to this motion.

regulation of the selection of state central committee members and the terms of state central committee chairs.[4]

The merits of the case were thereafter fully briefed six times in the Court of Appeals — first, on appellants' emergency motion for a stay of judgment pending appeal, which was granted on April 24, 1984; second, immediately prior to oral argument, which was held on May 15, 1984; third, pursuant to the Court of Appeals' Order dated August 5, 1985, requesting supplemental briefs on the first amendment issues presented on appeal; fourth, following remand from this Court for reconsideration in light of *Tashjian v. Connecticut;* fifth, on appellants' motion for rehearing and suggestion for rehearing *en banc* of the Court of Appeals' August 18, 1987 opinion reaffirming the entry of summary judgment;[5] and sixth, on appellants' motion to stay issuance of mandate pending disposition of this appeal. The record on summary judgment has twice been subjected to probing review *de novo* by the Court of Appeals in the course of that process. At each juncture, the Court of Appeals concluded that the challenged Elections Code provisions substantially burden appellees' first amendment rights and that appellants have failed to show a compelling state interest in defense of the challenged statutes.

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4 The District Court granted plaintiffs' motion as to California Elections Code sections 8660, 8661, 8663-8665, 8667, 8669, 9160, 9160.5, 9161, 9161.5, 9162, 9163, and 9164, relating to the selection of state central committee members, sections 9274 and 9816, relating to the terms of the state central committee chairs, section 11702, restricting endorsements in partisan primary elections, and sections 29102 and 29430, imposing criminal sanctions for violations of these provisions (II App. 69a-70a).

5 The petition for rehearing was unanimously denied on October 29, 1987. The full court was advised of appellants' suggestion for rehearing *en banc* and no judge requested a vote on the suggestion for rehearing *en banc* (I App. 5a).

Following the Court of Appeals' denial on November 17, 1987 (I App. 61a) of appellants' motion to stay issuance of mandate, Justice O'Connor denied appellants' application to stay mandate pending this appeal. Mandate issued on December 1, 1987. At their annual conventions held, respectively, in February and March 1988, the California Democratic and Libertarian Parties issued endorsements of candidates competing in the June 1988 primary elections (Add. Q at 92a; Add. P at 90a). At its annual convention held in February 1988, the California Republican Party amended its bylaws to repeal Elections Code restrictions on the composition and selection of its State Central Committee (Add. O at 72a).

THE DECISION BELOW CORRECTLY HELD THAT THE CHALLENGED STATUTES UNCONSTITUTIONALLY INFRINGE PLAINTIFFS' RIGHTS OF POLITICAL EXPRESSION AND ASSOCIATION

The decision below involves a straightforward application of settled constitutional principles and is wholly consistent with the recent decisions of this Court and the lower federal courts addressing the first amendment rights of political parties, including this Court's decision in *Tashjian v. Republican Party of Connecticut*, ___ U.S. ___, 107 S. Ct. 544 (1986). This Court has long held that political parties and their adherents "enjoy a constitutionally protected right of political association." *Cousins v. Wigoda*, 419 U.S. 477, 487 (1975). *Accord Democratic Party of the United States v. Wisconsin*, 450 U.S. 107, 120-24 (1981); *Tashjian*, 107 S. Ct. at 548-49. It is equally well-established that "[a]dvocacy of the election or defeat of candidates . . . is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation." *Buckley v. Valeo*, 424 U.S. 1, 48 (1976).

The lower federal courts have consistently struck down legislation that substantially burdens the exercise of first amendment rights by state and local political parties. *See*

Republican Party of Connecticut v. Tashjian, 770 F.2d 265 (2d Cir. 1985), *aff'd*, 107 S. Ct. 544 (1986); *Abrams v. Reno*, 452 F. Supp. 1166 (S.D. Fla. 1978), *aff'd*, 649 F.2d 342 (5th Cir. 1981), *cert. denied*, 455 U.S. 1016 (1982); *Ripon Society, Inc. v. National Republican Party*, 525 F.2d 567 (D.C. Cir. 1975) (*en banc*), *cert. denied*, 424 U.S. 933 (1976); *Martin-Trigona v. Dunne*, 425 F. Supp. 813 (N.D. Ill. 1977); *Fahey v. Darigan*, 405 F. Supp. 1386 (D.R.I. 1975). *See generally* Weisburd, *Candidate-Making and the Constitution: Constitutional Restraints on and Protections of Party Nominating Methods*, 57 S. Cal. L. Rev. 213 (1984); Note, *Developments in the Law – Elections*, 88 Harv. L. Rev. 1111 (1975).

The record before the District Court established that the challenged Elections Code provisions substantially burden plaintiffs' first amendment rights. Plaintiffs' uncontroverted declarations highlighted the debilitating effects of Elections Code regulation of official party organizations. As those declarations showed, the complained-of statutes have prevented the parties from educating the public regarding the candidates' positions on the issues and have engendered serious voter confusion (*see, e.g.*, Christman Dec. ¶¶ 6, 9-10, Add. A at 3a-4a, 5a; King Dec. ¶ 5, Add. G at 38a; Post Dec. ¶¶ 6, 9-10, Add. I at 47a-48a, 49a-50a; Romero Dec. ¶ 4, Add. K at 57a-58a). For example, stripped of the power to endorse or oppose primary candidates, the Democratic party was rendered impotent in the face of a primary campaign by a former Ku Klux Klan Grand Dragon whose views were antithetical to those of the Democratic party; this candidate sought and obtained that party's nomination for Congress (Constantini Dec. ¶ 2, Add. C at 15a). By the same token, these restrictions have precluded the parties from recruiting or developing candidates for office, and have severely hindered their ability to attract talented and interested people (*see, e.g.*, Coffey Dec. ¶¶ 2-3, Add. B at 10a-11a; King Dec. ¶

6, Add. G at 38a-39a; Supp. Layson Dec. ¶¶ 4-6, Add. H at 43a-44a).[6]

Based on these and other uncontroverted affidavits submitted below, the Court of Appeals found that "by excluding the committees from the process of choosing party nominees, 'a basic function of a political party in [our system],' *Kusper v. Pontikes*, 414 U.S. 51, 58 (1973), the state has effectively drained party central committees of political power" (I App. 15a). Similarly, the Court of Appeals found that restrictions on party governance had created "rigid organization[s] incapable of adjusting and responding to changing conditions" (I App. 31a). The result has been that "the parties have become weak and fossilized" (II App. 32a).

Where, as here, a statute restricts fundamental first amendment rights, the decisions of this Court hold that it may be sustained only if the government shows that the restriction "is a

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6 Appellants misleadingly suggest (Juris. Stmt. 13 n.2) that the District Court erred in failing to allow discovery regarding the "role played by the parties in enacting" the challenged Elections Code provisions. The Elections Code provisions challenged below were enacted, for the most part, in the early 1960s. *See, e.g.*, 1963 Cal. Stat. 1108 (enacting Cal. Elec. Code § 11702); 1961 Cal. Stat. 23 (enacting Cal. Elec. Code § 8660). Counsel's declaration under Rule 56(f) of the Federal Rules of Civil Procedure was limited to discovery regarding plaintiffs' authority to bring suit and "written communications *within the past five years* . . . regarding the issues raised in this litigation" (Graybill Dec. Ex. A at pp. 1-2, II App. 120a-121a) (emphasis added). On its face, that declaration was not calculated to lead to the discovery of California political parties' historical position with respect to the challenged Elections Code provisions.

To the extent that appellants sought discovery regarding plaintiffs' authority to bring suit, both the District Court and the Court of Appeals held that the authorization issue had been waived (I App. 19a n.17; II App. 75a). The District Court nevertheless made an express finding that "the plaintiff central committees and each of them have authorization and capacity to bring and maintain this action" (II App. 76a). Appellants have apparently abandoned the authorization issue in their appeal to this Court.

precisely drawn means of serving a compelling state interest." *Consolidated Edison Company of New York v. Public Service Commission*, 447 U.S. 530, 540 (1980). *Accord Tashjian*, 107 S. Ct. at 550 (challenged statute must be "narrowly tailored regulation which advances the State's compelling interests"). The Court of Appeals, in affirming the District Court's entry of summary judgment, correctly held that appellants had failed to carry their burden of showing that the challenged Elections Code provisions were necessary to further a compelling state interest.

As the Court of Appeals noted, appellants advanced two justifications for the challenged statutory scheme: (1) the asserted need to avoid intraparty "factionalism" in order to preserve "strong" parties to run their candidates' general election campaigns (I App. 34a, 46a); and (2) the asserted need to protect primary voters from "confusion" and "undue influence" from the party leadership (*id.* at 49a).

The Court of Appeals properly rejected each purported justification. With respect to factionalism, the Court of Appeals held that the "state has no interest in regulating political parties for the purpose of helping them win or retain voter support" (I App. 40a). *See also id.* at 47a (the state has "no legitimate interest in protecting political parties from disruptions of their own making"). As the Court of Appeals explained, this Court's decision in *Tashjian* makes it "resoundingly clear" that "the First Amendment forecloses paternalistic state action designed to protect parties from choosing rules of governance that may prove to be harmful to party interests" (I App. 38a).

The state's purported interest in minimizing the influence of party leadership and preventing voter confusion during the primary process was likewise rejected as constitutionally inadequate. Once again relying on *Tashjian*, the Court of Appeals cautioned that "'[a] State's claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism'" (I App. 50a-51a). The Court of Appeals

accordingly rejected appellants' argument that "denying voters access to the views of party leadership somehow enhances their First Amendment rights," emphasizing instead this Court's repeated pronouncements of its "'faith in the ability of individual voters to inform themselves about campaign issues'" (I App. 50a, *quoting Tashjian*, 107 S. Ct. at 552).

THE QUESTIONS PRESENTED ARE NOT SUBSTANTIAL

In urging plenary review by this Court, appellants argue that the Court of Appeals misapplied *Tashjian* and that the provisions of the California Elections Code invalidated below are different from the Connecticut closed primary system in three assertedly significant respects. First, appellants contend that, unlike the statute invalidated in *Tashjian*, the challenged provisions of the California Elections Code do not conflict with the parties' bylaws and are necessary to enable the parties to enforce their rules in state court. Second, appellants contend that California's asserted interest in promoting the stability of its governmental system is different from the state interest advanced in support of the Connecticut closed primary system. Third, appellants contend that the challenged Elections Code provisions do not substantially burden political parties' first amendment rights because the parties can opt-out of the California primary system and qualify their candidates as independent candidates on the general election ballot.

Each of these purported grounds for review is contrary to the record below and the controlling authorities, including this Court's decision in *Tashjian*. None presents a question warranting plenary review by this Court.

A. The Purported Absence of a Conflict Between the Parties' Bylaws and the Challenged Elections Code Provisions Is Immaterial

1. Plaintiffs' Uncontroverted Declarations Demonstrated that California Political Parties Are Opposed to Elections Code Regulation

Appellants argue that this case presents an issue that is not addressed in *Tashjian* — whether a political party's first amendment rights are substantially burdened by statutes that do not conflict with party rules and bylaws and accordingly represent acts of political self-governance (Juris. Stmt. 19). That glib assertion was raised and properly rejected below.

As the Court of Appeals correctly observed, unlike the statutes invalidated in *Tashjian*, the Elections Code provisions invalidated below themselves prescribe the rules for internal party governance. Plaintiffs' failure to enact inconsistent rules in the face of this controlling legislation is therefore irrelevant (I App. 20a-21a).

Moreover, contrary to appellants' misleading suggestion, plaintiffs' declarations in support of summary judgment demonstrated that the parties are fundamentally opposed to Elections Code regulation prescribing the composition of their state central committees and prohibiting their ability to endorse candidates in primary elections. As the Court of Appeals found, these declarations establish that the plaintiffs "would reform the composition of their parties' central committees if the statutes were invalidated," and "would make preprimary endorsements if the practice were not prohibited" (I App. 23a). That finding is amply supported by the record below (*see, e.g.*, Christman Dec. ¶¶ 2-5, 13-15, Add. A at 2a-3a, 6a-7a; Coffey Dec. ¶ 4, Add. B at 11a; King Dec. ¶¶ 2-6, 12, Add. G at 37a-39a, 41a; Post Dec. ¶¶ 2-6, 14, Add. I at 46a-48a, 51a; Romero Dec. ¶¶ 2-9, Add. K at 57a-59a).

Plaintiffs' declarations further established that both the California Democratic and Libertarian parties have attempted unsuccessfully to obtain amendment of the challenged restrictions on internal party governance (Coffey Dec. ¶¶ 7-9, Add. B at 12a-13a; Gingell Dec. ¶¶ 5-6, Add. E at 25a-26a). For example, appellees' uncontroverted declarations demonstrated that

> [w]hen the Libertarian party qualified for the ballot, it was forced to jettison its "preferred and natural" party organization and replace it with one already mandated for one of the existing qualified parties. After adopting the rules of the Peace and Freedom Party as the least objectionable interim model, the Libertarians drafted a body of rules specifically tailored to their party's distinctive needs. When presented to the legislature, the proposed rules languished and died in committee. Thus, the Libertarian party has been compelled by the state to organize itself in a way considered inimical to its political interests.

(I App. 31a-32a) (citations and footnote omitted).

Similarly, although not a named plaintiff, the California Democratic Party has been on record since December 1984 as being fully supportive of this lawsuit in all its causes of action and has indicated its intention to join the litigation at the earliest available opportunity (Kelly Dec. ¶¶ 7-9 & Ex. A, Add. F at 30a, 32a; Supp. Kelly Dec. ¶ 5, Add. M at 64a-65a). In addition, all plaintiff county central committees, which include representative Democratic and Republican county central committees, are on record in opposition to the Elections Code provisions challenged herein (I App. 23a).[7]

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[7] The only purportedly contrary evidence proffered below or cited in appellants' Jurisdictional Statement is the Rodda Declaration (II App. 105a). That declaration does not address unsuccessful efforts to change Elections Code regulation of political parties, including the unique problems of the Libertarian party, but merely states that where legislative changes in the "structure and procedures of the major political parties" have occurred, they were enacted "at the request and with the concurrence of the party affected" (Rodda Dec. ¶ 6, II App. 106a). The Rodda Declaration does not establish or imply, as appellants suggest, that the parties "have chosen the policies reflected in the invalidated statutes as their own in pursuit of their own interests" (Juris. Stmt. 19). At all events, the Court of Appeals correctly noted that "[e]ven if no party at the present time wished to adopt rules in conflict with the statutes, the State's interest in preventing any party from doing so in the future would hardly be considered either compelling or even legitimate under *Tashjian*" (I App. 37a).

Thus, even if appellants were correct in contending that the statutes were initially enacted at the request of the parties (Juris. Stmt. 19), that alleged fact is of no significance where the uncontroverted record below establishes that the parties are now opposed to Elections Code regulation. *See Tashjian*, 107 S. Ct. at 547 (noting that Connecticut Republican party initially supported closed primary system).

2. California Political Parties Have Adopted New Rules that Depart from the Invalidated Elections Code Provisions

Appellants assert that after this Court's December 4, 1987, denial of appellants' motion to stay mandate, the California Democratic and Republican parties took action to "restore protection of the parties lost by the invalidation of Elections Code § 11702" (Juris. Stmt. 17). Appellants further assert that neither political party has adopted any amendments to its bylaws to effect organizational or procedural changes (*id.* at 18). Appellants appear to argue that California political parties do not desire either the right to endorse or the right to control their internal rules and procedures. Appellants' argument is based upon unwarranted inferences from drafts of bylaws changes, and is totally undercut both by the uncontroverted record below demonstrating the unequivocal and strongly held desire of all plaintiff county central committees, and of the California Democratic and Libertarian parties, to be free from state

regulation, and by California political parties' recent actions to exercise their first amendment rights.[8]

Following this Court's denial of appellants' motion to stay mandate, the California Democratic Party adopted a final set of endorsement procedures for the June 1988 primary elections (Kelly Dec. ¶¶ 3-8, Add. Q at 93a-95a). On February 20-21, 1988, pursuant to these procedures, the Democratic Party held 16 regional pre-endorsing conferences around the state in which county central committee members evaluated Democratic candidates running for local partisan offices such as United States Congress, State Senate and State Assembly (*id.* ¶ 9 at 95a). The Democratic Party, at its March 20-21, 1988 annual convention, issued final endorsements in over 125 separate Democratic primary contests for the offices of United States Senate, United States Congress, State Assembly, and State Senate (*id.* ¶ 10 at 95a). Moreover, now that the Democratic party has successfully implemented its preprimary endorsement procedures, it is moving forward to review and revise the bylaws concerning the composition of its state central committee (*id.* ¶ 13 at 96a).

The California Libertarian Party similarly exercised its right of endorsement at its annual convention, held on February 12-15, 1988 (Hinkle Dec. ¶ 5, Add. P at 91a).

The California Republican Party also has moved to exercise its first amendment rights. At its annual convention, held February 19-21, 1988, the Republican Party amended its bylaws

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8 Appellants have submitted new matter not included in the record below (I App. 70a-86a). The drafts of party bylaws submitted by appellants are not the final versions, nor are appellants' inferences therefrom accurate. In order to present this Court with an accurate record, appellees submit herewith declarations from the chairs of the California Democratic and Libertarian parties and from the general counsel of the California Republican Party describing the parties' final actions following issuance of mandate by the Court of Appeals (Add. O-Q at 72a-92a).

to reform the composition of its state central committee (Bell Dec. ¶ 9, Add. O at 74a). Although the California Republican Party adopted bylaws prohibiting endorsements in contested primary elections for designated partisan elective offices, this action does not constitute a blanket ban on endorsements (*id.* ¶¶ 5-7 at 73a-74a).[9] More importantly, as the Republican Party's general counsel points out, the recently adopted rules reflect the Republican Party's policy decision as to what is in its best interests at the present time, and should not be construed to mean that the party desires the kind of government regulation mandated by the Elections Code provisions invalidated below (*id.* ¶ 8 at 74a).

3. *California's Asserted Interest in Judicial Enforcement of Political Party Rules Is Not a Sufficient Justification for Regulating the Content of those Rules*

Appellants make the further assertion that the challenged statutes serve a compelling state interest by allowing political parties to enforce their rules in state court (Juris. Stmt. 13, 21). That purported justification for Elections Code regulation sweeps too broadly. As the Court of Appeals observed, even if appellants could establish a compelling state interest in judicial enforcement of political party rules, which they have not done, appellants have failed to show that it is also necessary to prescribe the content of those rules (I App. 38a n.26) (statute simply providing for judicial enforcement of party rules would be a less restrictive alternative). *Cf. Tashjian*, 107 S. Ct. at 550 (statute must be "narrowly tailored").

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9 Endorsements are permitted in special elections and in uncontested races for partisan elective offices. Moreover, the present prohibition on endorsements in contested partisan races can be suspended by a 2/3 vote of the Republican State Central Committee (Bell Dec. ¶ 7, Add. O at 73a-74a).

B. California's Asserted Interest in Promoting the Stability of Its Governmental System Does Not Justify the Challenged Restrictions on Political Parties' Speech and Internal Governance

Appellants assert that this Court's decisions in *Storer v. Brown*, 415 U.S. 724 (1974), and *American Party of Texas v. White*, 415 U.S. 767 (1974), recognize a compelling state interest in creating "umbrella parties" to promote "stability of its governmental system and the democratic management of the internal affairs of its ballot-qualified parties" (Juris. Stmt. 19). Appellants urge that plenary review is necessary because the Court of Appeals failed to accord proper deference to these asserted justifications for Elections Code regulation.

Contrary to appellants' contention, this Court has never held, absent action by political parties in derogation of the constitutional or civil rights of party adherents or the electorate in general, *cf. Smith v. Allwright*, 321 U.S. 649 (1944), that the state has an interest in the "democratic management" of internal party affairs. *See generally Democratic Party of United States v. Wisconsin*, 450 U.S. 107, 124 ((1981). *See also Ripon Society, Inc. v. National Republican Party*, 525 F.2d 567 (D.C. Cir. 1975) (*en banc*), *cert. denied*, 424 U.S. 933 (1976) (rejecting challenge to Republican National Party's formula for allocating delegates at its national convention). *American Party of Texas v. White* simply notes in dictum that "the party nominating convention process is unrelated to ballot qualification and corresponds more to the democratic management of the political party's internal affairs." 415 U.S. at 783 n.15. Even assuming that this Court were now inclined to recognize a previously inchoate interest in democratic party governance, appellants have failed to demonstrate that the Elections Code provisions invalidated below in any way promote party democracy.

There is a similar failure of proof with respect to the asserted interest in the stability of the state's governmental system, which

purportedly arises under *Storer*. The uncontroverted record below established that the candidates, not the parties, run the general election campaign (*see, e.g.*, Supp. Layson Dec. ¶ 7, Add. H at 44a). Although appellants argue that under California law the duty to run the general election campaign belongs to the central committees (Juris. Stmt. 10-11), plaintiffs' declarations demonstrated that the Elections Code prohibition on preprimary endorsements has created a political vacuum that each candidate's individual campaign has been left to fill. As the Court of Appeals recognized, "each candidate forms an ad hoc committee to run his primary campaign and, if he is successful, that committee goes on to run the general election campaign independently of the party organization" (I App. 47a). There is accordingly no factual linkage between the challenged Elections Code restrictions and the state's asserted interest in preserving the integrity of the general election.

Moreover, the interest recognized as compelling in *Storer* is limited to the orderly conduct of the general election campaign. That interest does not extend to restrictions on political parties' speech during the primary election campaign or to restrictions on the conduct of internal party affairs unrelated to the general election campaign. As the Court of Appeals correctly observed:

> To be sure, in *Storer* the Court recognized that a state has a compelling interest in "the stability of its political system." 415 U.S. at 736. But, as the Supreme Court pointed out in *Tashjian*, "[t]he statute in *Storer* was designed to . . . prevent the disruption of political parties from without, and not, as in this case, to prevent the parties from taking internal steps affecting their own process for the selection of candidates." *Tashjian*, 107 S. Ct. at 553-54.
>
> This distinction between disruption from within and disruption from without, which the Court so clearly delineated in *Tashjian* as a basis for distinguishing *Storer*, is the distinction that the State fails to come to grips with in this case.

* * * * *

> [*A*] *state's interest is in orderly elections, not orderly parties,* and it may regulate political parties only as an incident to regulating elections. . . . [C]ritical to the *Storer* holding was that California's disaffiliation provision *did not attempt to control intraparty feuding during the primary campaigns*. To the contrary the primary was recognized as the forum in which "contending forces within the party finally settle their differences." *Storer*, 415 U.S. at 735. . . . Nothing in *Storer* suggests that a state may preempt intraparty feuding to help the parties win elections.

(I App. 35a, 40a-42a) (emphasis added).

Appellants have repeatedly invoked the state's purported interest in protecting political parties against potentially debilitating internal disputes, both during the primary process and with respect to the selection of the parties' internal leadership, in seeking to justify the challenged Elections Code provisions. For example, appellants argue that Elections Code regulation limiting the parties' state central committee chairpersons to a single term that alternates between representatives of Northern and Southern California is necessary to avoid "sectional identification" and "unnecessary conflict" (Juris. Stmt. 15). As the Court of Appeals recognized, such arbitrary restrictions burden the parties' first amendment rights by "impair[ing] the parties' ability to commit their fortunes to experienced and successful leadership" (I App. 33a). *Tashjian* confirms that a state's generalized interest in governmental stability does not extend to paternalistic measures, like the Elections Code provisions invalidated below, designed to "protect[] . . . the Party against the Party itself." 107 S. Ct. at 554.

Tashjian holds that the first amendment protects the freedom to identify the people who constitute the party. The Court of Appeals correctly reasoned that *Tashjian* applies with equal force to state regulation of who may run the party (I App. 33a) and

how the party may best exercise its first amendment rights (I App. 47a). As this Court explained in *Tashjian*:

> The State argues that its statute is well designed to save the . . . Party from undertaking a course of conduct destructive of its own interests. But on this point "even if the State were correct, a State, or a court, may not constitutionally substitute its own judgment for that of the Party." *Democratic Party of United States v. Wisconsin*, 450 U.S. at 123-124 (footnote omitted). The Party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution. "And as is true of all expressions of First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational." *Id.* at 124.

107 S. Ct. at 554 (footnote omitted).

C. Providing Ballot Access to Candidates Who Do Not Participate in the State-Run Primary Does Not Lessen the Burden Imposed by Elections Code Regulation of Ballot-Qualified Parties

Finally, appellants argue that since California provides ballot access independently of the closed primary system, Elections Code restrictions on the activities of parties that choose to become ballot-qualified do not infringe those parties' first amendment rights (Juris. Stmt. 20-21).

The problem with appellants' argument is that Elections Code regulation of ballot-qualified parties is so pervasive that, once ballot-qualified, a party is effectively foreclosed from obtaining access to the general election ballot by any means other than the primary election. For example, Elections Code sections 8500 and 9000 grant exclusive use to the names "Democratic Party of California" and "Republican Party of California," to those respective entities. There is no means provided for a party

voluntarily to renounce its status as ballot-qualified. So long as at least one candidate chooses to register for the primary election, with or without party sanction, and receives at least 2% of the vote for any statewide office, the party remains ballot-qualified. Cal. Elec. Code § 6430(a).

While in theory a ballot-qualified party could renounce the primary election and seek to qualify its candidates as independents on the general election ballot, *see* Cal. Elec. Code §§ 6830-6920, the Elections Code presents three major impediments to such an effort. First, a candidate will not qualify as an independent if he or she was registered at any time during the previous year as a member of a ballot-qualified party. Cal. Elec. Code § 6830(c). Second, an independent candidate is by definition "independent," and is not identified by party affiliation on the general election ballot, Cal. Elec. Code § 10210, thus limiting the political efficacy of such ballot access. Third, the party has no statutory control over who will register as a candidate in the party primary. *See* Cal. Elec. Code § 6490. A party choosing to forego the primary election may nonetheless find its candidate opposed on the general election ballot by a competing candidate, designated as the official party representative, who obtained ballot access through the direct primary.

A ballot-qualified party would realize no offsetting benefits by boycotting the state-sponsored primary election. The party's rules for internal governance would remain subject to the prescriptions of the Elections Code regardless of whether the party chose not to participate in the direct primary. *See* Cal. Elec. Code §§ 8500, 9000, 9600, 9750, 9955 (providing that "organization, operation, and functions" of California's ballot-qualified parties, including new parties, are subject to provisions of the Elections Code). Moreover, even though a ballot-qualified party had chosen to sit-out the direct primary, Elections Code section 11702 would still prohibit the party from opposing any "renegade" candidates who nonetheless sought nomination through the state-sponsored primary.

CONCLUSION

For all the foregoing reasons, appellees respectfully request that this Court summarily affirm the decision below or dismiss this appeal for lack of a substantial federal question.

Dated: March 30, 1988

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No. 87-1269

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1987

MARCH FONG EU, Secretary of State of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; and LEO HIMMELSBACH, District Attorney of Santa Clara County,

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

ADDENDUM TO MOTION TO AFFIRM OR TO DISMISS

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ADDENDUM A

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 8, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF ROY CHRISTMAN IN SUPPORT OF PLAINTIFFS' MOTION FOR A SUMMARY JUDGMENT

I, ROY CHRISTMAN, declare as follows:

1. I make this declaration in support of plaintiffs' motion for a summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a member of the Santa Clara County Democratic Central Committee (the

"County Central Committee"). I have been a member of the County Central Committee since January 1979 and served as Chair from January 1981 to January 1983. I am a member of the Democratic State Central Committee. I have been an active participant in the activities of the Democratic Party of California since 1970.

2. As a member of the County Central Committee, I would like that Committee to endorse, support, or oppose candidates for nomination in direct primary elections, including candidates running for State Senate, State Assembly, and United States House of Representatives in June 1984 and in 1986. As a member of the State Central Committee, I would like that Committee also to endorse, support, or oppose candidates running for nomination in direct primary elections, including candidates running for President, United States Senator, Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, and State Controller. I would encourage and contribute to this endorsement process if that process were not prohibited by section 11702 of the California Elections Code (the "Elections Code") and the threat of enforcement of this provision by the defendants.

3. I would also like the County Central Committee to endorse, support, or oppose candidates for school, county, and city offices, including candidates running for the County Board of Supervisors, mayor, city council, and school boards in the 1984, 1985, and 1986 elections. I would encourage and contribute to this endorsement process if that process were not prohibited by section 6, article II of the

California Constitution and section 37 of the Elections Code and the threat of enforcement of these provisions by the defendants.

4. I would have favored endorsing Keith Raffel in the 1982 June primary race that determined the Democratic nominee for the 12th Congressional District. Mr. Raffel was a young, bright, and articulate Democrat, experienced in Washington, D.C. politics. It was my belief that of all the primary candidates, only Raffel would have seriously challenged the Republican candidate. Because it was not able to endorse or support Raffel, the County Central Committee was not able to express its views regarding Raffel's superior qualifications, nor was it able to work to select and develop the candidate that we believed would have been best for the party. This contributed to Raffel's loss in the primary.

5. As for nonpartisan elections, the County Central Committee would have endorsed Anita Duarte in the 1983 race for the County Board of Supervisors. We did not do so because that would have been in violation of the Elections Code and the California Constitution.

6. As these examples demonstrate, the County Central Committee's inability to endorse candidates severely hinders it in performing some of its most vital functions. It cannot educate the public on a candidate's position on the issues, nor can it recruit or develop candidates for office. The latter function is particularly crucial right now in the 22nd Assembly District, where no Democrat has registered or is likely to register to run in the June primary. Because the County Central Committee cannot support any candidate in this race, it cannot recruit

anyone to run in the primary. The voters in the 22nd District will, therefore, have no choice in the November general election. Such a result undermines the very basis of our democratic form of government.

7. Numerous unofficial groups regularly endorse candidates in primary and nonpartisan elections in Santa Clara County. These groups include the National Women's Political Caucus of Santa Clara County, the Loma Prieta Chapter of the Sierra Club, labor organizations such as the Santa Clara County Central Labor Council and the California Teachers' Association, ad hoc political groups such as Associated Homeowners of Saratoga and the West Valley Community College Review Council, and newspapers, such as the San Jose Mercury News. True and correct copies of endorsement materials distributed by some of these groups are appended hereto as Exhibit A.

8. Allowing these organizations to endorse, but forbidding that right to our County Central Committee makes no sense. All of the organizations mentioned in paragraph 7 are private interest groups. Their endorsement decisions are made at closed meetings and are based on a narrow range of issues. In contrast, the County Central Committee holds open meetings. Its members are elected by the voters, and its decisions reflect a broad range of interests. Our endorsement would, therefore, be much more democratic and meaningful. Moreover, if our government is going to be responsible to the people, voters must be given as much information as possible. By censoring the County Central Committee's right to express its opinion, the state is denying voters a valuable and basic piece of information.

9. In many school, county, and city elections, the race is between a candidate whom people know is a Republican and a candidate whom people know is a Democrat. In recent San Jose and Santa Clara mayoral races, for example, it was clear to any active and informed voter that they were faced with a contest between a Republican and a Democrat.

10. Allowing anyone to endorse except for the County Central Committee has also led to voter confusion. Misleading slate mailers have been distributed that suggest the County Central Committee has endorsed a candidate when, in fact, no such endorsement had, or indeed could have been issued. One such mailer, distributed in the 1982 general election campaign, stated that it was a "Democratic Voter Guide." Because I was then Chair of the County Central Committee, the press asked me to comment upon this mailer. I told them that I believed it was an improper step by the candidate who distributed it, because it could mislead voters into believing an official endorsement had been given. A true and correct copy of this mailer is appended hereto as Exhibit B. If the County Central Committee were allowed to endorse, we could fill the vacuum presently occupied by such mailers and reduce voter confusion.

11. Many people have called to ask me who the County Central Committee is supporting in given races. I always try to tell them something about the candidates, but I am also forced to say that the County Central Committee is prohibited by law from endorsing or supporting such candidates.

12. I became a member of the County Central Committee because I shared the political beliefs of the other members of that organization. I thought that the County Central Committee could advance these shared political beliefs far more effectively than I could as a single individual. My individual endorsement is worth far less than the collective endorsement of the County Central Committee as a whole. Since the Committee cannot endorse in primary or nonpartisan campaigns, our whole purpose in associating together has been frustrated.

13. Our County Central Committee would adopt more flexible rules regulating the time and place of our meetings than those contained in sections 8920 and 8921 of the Elections Code. Other than our first meeting, we regularly meet in a location other than the County Courthouse, with no adverse effects. Having to hold our first meeting in the Courthouse has caused problems sin the past. For example, one year we had to delay our meeting because one member could not find the building.

14. As a member of the Democratic State Central Committee and an active member of the Democratic Party, I would also like to abolish sections 8660, 8661, 8663, 8664, 8665 of the Elections Code, to allow that Committee to control the method of selecting its own members. A party should be allowed to determine how to select members of its central policymaking body, the body that controls the internal affairs of the organization. Currently, we are not allowed to choose the selection method that would best meet the needs of our party.

15. In addition, I would favor the adoption of more flexible rules regulating the time and place of State Central Committee meetings contained in section 8710 of the Elections Code. Cities should be able to compete for the meeting. The meeting attracts publicity and would bolster the strength of the local party organization in the city where it is held. As it is, we must meet only in Sacramento, depriving all other California cities and local party organizations of the benefits the meeting offers.

16. Neither I, nor the County Central Committee, nor the State Central Committee, has sought to disobey these rules mentioned in paragraphs 13 to 15 because of the threat of enforcement of these provisions by the defendants.

17. I am familiar with an October 1983 poll conducted and published by The Field Institute which stated that 85% of all adults interview said they followed events in government and public affairs, and 76% agreed that there are important differences in what the Democratic and Republican Parties stand for.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at San Francisco, California, this 6th day of March, 1984.

/s/ Roy Christman
ROY CHRISTMAN

[Proof of Service Omitted]

[Exhibits A and B Omitted]

ADDENDUM B

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 5, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF BERT COFFEY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, BERT COFFEY, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I was the Chairperson of the Democratic State Central Committee (the "State

Central Committee") from 1977 to 1979. I am currently a member of the Executive Committee of the State Central Committee and have held that position since 1982. I have been an active member of the Democratic Party since 1948, and have held various party offices, including the Northern Chair of the State Central Committee (1975-77), Chair of the Contra Costa County Democratic Central Committee (1968-70, and 1980-82), member of the Democratic National Committee (1980-present), and member of the Hunt Commission, which was formed to review and write the rules governing the 1984 Democratic National Convention (1983).

2. It is crucial for the Democratic Party to be allowed to endorse, support, or oppose candidates for public office. Without that ability, the Party is a powerless, ineffective organization. Shortly after I was elected Chair of the State Central Committee I approached a person who traditionally had been very generous in making large contributions to Democratic candidates. Thinking that he might be willing to contribute to the Party, I asked him if he might want to donate some money. He laughed, turned to me and said that I was crazy, that he "gave direct." He meant that he gave his money directly to the candidates and not to the Party. This individual recognized that without the ability to work for the election or defeat of candidates, the Party serves no important function.

3. Because the Party is so severely regulated, the Party organization is unable to attract many talented and interested people who would otherwise have joined the Party. Deprived of quality personnel and restricted from endorsing candidates, the Party is so weakened that it

cannot fulfill the essential roles it must play in our democracy. One of these roles is holding elected officials accountable to the citizenry. Without a strong party system, wealthy individuals and special interest groups have an inordinate amount of control over elected officials. Another of the roles that a party should play is pursuing and advocating the political positions which I and other party adherents wish to espouse. Because of its inability to endorse candidates and its resulting weakness, the Party cannot effectively serve this role.

4. I would therefore like the State Central Committee and the County Central Committee to endorse, support, or oppose candidates running for nomination in direct primary elections and would encourage and contribute to this endorsement process if that process were not prohibited by section 11702 of the California Elections Code ("the Elections Code") and the threat of enforcement of this provision by the defendants. I would also like the County Central Committees to endorse, support, or oppose candidates for school, county and city offices and would encourage and contribute to this endorsement process if that process were not prohibited by section 6, article II of the California Constitution and section 37 of the Elections Code and the threat of enforcement of these provisions by the defendants.

5. As Chair of the State Central Committee, I was aware of the attitudes and preferences of the Party's members as to political issues. I carefully considered and attempted to accommodate the wishes of the majority of these members in carrying out my duties as Chair.

6. It is demonstrably not true that party endorsements will predetermine the victor in a political election. There have been countless cases in the history of American politics where the endorsees of political parties have lost. In general, voters are independent and will not automatically rubber stamp the party endorsee.

7. During my term as Chair of the State Central Committee, I was heavily involved in the California Democratic Party's effort to reform the statutes governing its organizational structure. Before 1979, the Party had tried for twenty years to persuade the State Legislature to change the rules governing the selection of members to the State Central Committee. The Party was dissatisfied because the vast majority of State Central Committee members were party nominees and their appointees, leaving only a few seats for the County Central Committees. Time after time, however, the Legislature had rebuffed any effort to reform this unrepresentative system.

8. When I became Chair, a series of hearings were conducted to determine the attitude of the Party membership towards reforming the method of selecting members to the State Central Committee. Other members of the Party leadership and I presented a proposal based upon these meetings to the legislature. Although the Legislature finally agreed to change the rules, they did so only after a protracted, hard fought battle and even then substantially deviated form the Party's proposal. I am still not satisfied with the statutorily prescribed method of selecting the State Central Committee, as set forth in sections 8660, 8661, 8663, 8664, 8665, 8667, and 8669 of the Elections Code. They still do not provide for adequate representation of the County

Central Committees on the Democratic Party's central policy making body.

9. Even to the extent that they improved the rules, the 1979 reforms could be erased at any time by the Legislature. A bill proposed last year by Assemblyman Richard Floyd, A.B. 1977, would have done that, returning the Party in large part to the unsatisfactory pre-1979 method of selecting members to the State Central Committee. This illustrates the danger of putting the Democratic Party's constitutional rights into the hands of the Legislature.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Richmond, California, this 3rd day of March, 1984.

/s/ Bert Coffey
BERT COFFEY

ADDENDUM C

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 5, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF EDMOND COSTANTINI IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, EDMOND COSTANTINI, declare as follows:

1. I am a member of both the State Central Committee of the Democratic Party of California and of that body's Executive Board. I have been a member of both organizations since 1978. I also serve as

chair of the California Credentials Committee. I have been an active member of the Democratic Party since 1960.

2. As chair of the Credentials Committee, I preside over meetings held to consider whether individuals should be credentialed as members of the State Central Committee. In 1980, the credentials of Tom Metzger were challenged, placing the matter before our Committee. Tom Metzger had been a Democratic nominee for Congress from the San Diego area, but had been defeated by Representative Clair Burgener, a Republican. Mr. Metzger received the nomination even though he was a Grand Dragon of the Ku Klux Klan and stood for policies abhorred by the Democratic Party and its members. Because of the provisions of the Elections Code, the Democratic party could not promote the candidacy of a more representative Democrat or argue to the electorate that Mr. Metzger's program and ideas should be rejected. The Credentials Committee did not credential Mr. Metzger, a position affirmed by the whole State Central Committee.

3. I recently learned that in the spring of 1983 Assemblyman Richard Floyd introduced a bill into the Assembly, A.B. 1977, that would have changed the method of selecting the members of the Democratic State Central Committee, forcing the Party to revert in large part to the system that had existed before 1979. A true and correct copy of that bill as it was originally proposed is appended hereto as Exhibit A. The State party had long deliberated over the matter of internal reform–a process in which I was intimately involved–and, after the conclusion of those deliberations, had succeeded with considerable difficulty in persuading the legislature to abandon the pre-1979 structure. The

Party advocated reform because the old system did not provide for the fair representation of County Central Committees or grass roots activists on the State Central Committee. In short, it did not meet the needs of the party. It was therefore distressing to learn that this bill, A.B. 1977, had been introduced into the legislature without consultation with the Party and, as far as I know, without the knowledge of the official Party leadership. The Party has avoided being injured by this misconceived bill because of legislative amendments that have struck these offending provisions.

4. The danger of allowing the Legislature to have such extensive control over a political party's structure is well illustrated by this example. Only the party can best judge its needs and thus best structure its organization. As long as the legislature has the power to change the rules governing the internal affairs of a political party at will, the health and welfare of that party is in constant jeopardy.

5. Late in 1983, I learned that the California Fair Political Practices Commission had directed its staff to prepare a report on slate mailings in the 1982 primary campaigns. I contacted a member of the staff to request a copy of that report, which that person later gave me. It identifies a number of problems associated with slate mailings which affect the health and well-being of our political system. I agree with the report's conclusion on page 55 that these problems could be ameliorated by allowing "party endorsements in primary campaigns so as to offset the 'growing power' of slate mailing." I have appended hereto as Exhibit B a true and correct copy of this report.

6. Also appended hereto, as Exhibit C, is a true and correct copy of a slate mailer distributed by Willard Murray in the Los Angeles area in June 1982.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Davis, California, this 29th day of February, 1984.

/s/ Edmond Costantini
PROFESSOR EDMOND COSTANTINI

[Exhibits A Through C Omitted]

ADDENDUM D

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs.

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 2, 1984]

Date: April 9, 1984
Time: 10:30 a.m.

SUPPLEMENTAL DECLARATION OF EDMOND COSTANTINI IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, EDMOND COSTANTINI declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a member of both the State Central Committee of the Democratic Party of California ("State Central Committee") and of that body's Executive Board. I have been

a member of both organizations since 1978. I also serve as chair of the Credentials Committee of the State Central Committee. I have been an active member of the California Democratic Party since 1960.

2. I hold a Ph.D. in political science from the University of California at Berkeley, and have been a professor of Political Science at the University of California at Davis since 1964. My areas of expertise are political parties, political leadership, and public opinion.

3. On October 15, 1983, I attended a meeting of the Executive Board of the State Central Committee which was held in San Diego, California.

4. At that meeting, I , along with other members of the Executive Board of the State Central Committee, presented to the full Executive Board a resolution supporting the above-captioned lawsuit. The text of the resolution, as it was actually presented, is contained in Exhibit A to this Declaration. The resolution passed by a voice vote without audible dissent. This resolution was presented, and a vote was taken, pursuant to the rules applicable to the Executive Board. For example, we collected the signatures of at least fifty (50) Executive Board members on behalf of the resolution before we presented it for the consideration of the full Board. (*See* Article VIII, Section 7(d) of the By-Laws of the Democratic State Central Committee, attached as Exhibit 2 to Defendants' Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Defendants' Motions to Dismiss and for Summary Judgment.)

5. The resolution recognized that the Party is "subject to excessive governmental regulation, with state laws prescribing in extraordinary detail how they are to be organized, forbidding them to endorse candidates entered in their own primaries; and preventing them from endorsing candidates for local elective office . . . ." and therefore resolved that "[t]he Executive Board of the California Democratic Party supports, in principle, the aforementioned suit . . . ."

6. The question of the State Central Committee joining this lawsuit as a co-plaintiff was not put before the Executive Board.

7. I am not a named plaintiff in this lawsuit. However, I believe strongly in the objectives of all three causes of action of this lawsuit.

8. The right of political party organizations such as county central committees to endorse political candidates, which right is sought in this lawsuit, is essential to the vitality of the political parties. The ability of the political party organizations to speak out is a necessary element of the public debate and free exchange of ideas which is a principle on which our government is founded.

9. Political parties thrive on the competition of ideas, the clash of ambitions, and the conflict of interests characteristic of all robust democratic institutions. One of their special functions historically and worldwide is that they institutionalize conflict among the citizenry, and that they provide that citizenry an organizational forum in which conflict can be expressed and resolved peacefully so that common purposes can be more effectively pursued.

10. Contests for a party's endorsements are indeed occasions when the various forces of conflict may come into play. It is by no means self-evident that, as a general rule, suppressing those forces within party organizations leads them to become healthier and more vital places or more attractive vehicles for public participation in the process of self government. To the contrary, suppressing the competition among ideas and among candidates would destroy the vitality and meaning of the party organizations.

11. In a given instance, prudence might dictate that a county central committee not become involved in a particular primary or local election contest. Plaintiffs' lawsuit would in no way prevent official party organizations from exercising such self-restraint if for some reason the organization believed such restraint to be in its best interests. In other words, the members of those organizations could find on their own accord and on the basis of their own intelligence that an endorsement in a given instance would be politically unwise or imprudent–a conclusion which defendants paternistically claim the State of California should reach for them in *every* instance.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Davis, California, this 30th day of March, 1984.

/s/ Edmond Costantini
EDMOND COSTANTINI

EXHIBIT A
RESOLUTION FOR CONSIDERATON AT DSCC EXECUTIVE BOARD MEETING

October 15, 1983

WHEREAS: California's Political Parties are subject to excessive governmental regulation, with state laws prescribing in extraordinary detail how they are to be organized, forbidding them to endorse candidates entered in their own primaries; and preventing them from endorsing candidates for local elective office;

WHEREAS: a number of court decisions across the nation suggest that this excessive state regulation of parties violates the First Amendment to the U.S. Constitution;

WHEREAS: the California Committee on Party Renewal–a multiparty group of party leaders and other interested persons dedicated to the reinvigoration of political parties–is filing suit in federal court to end excessive governmental intrusion into party matters;

WHEREAS: one of the state's most distinguished trial lawyers–James Brosnahan of the prestigious San Francisco firm of Morrison & Foerster–has agreed to serve on a pro bono basis as counsel in this effort;

WHEREAS: several Democratic (and other) organizations and party leaders have already agreed to serve as colitigants–including, for example, the Democratic County Committees in the following

counties: San Francisco; Alameda; Los Angeles; Santa Clara; Solano.

AND WHEREAS: winning the suit will not require parties to reorganize or to endorse in primaries and local elections, but will only allow them to make decisions on these matters of their own accord;

THEREFORE, BE IT RESOLVED THAT:

The Executive Board of the California Democratic Party supports, in principle, the aforementioned suit;

THEREFORE, BE IT FURTHER RESOLVED THAT:

The State Party Chair bring these matters to the attention of Democratic Party Leaders in the Legislature and present them with an opportunity to offer legislative input regarding the aforementioned suit; and,

THEREFORE, BE IT FURTHER RESOLVED THAT:

If, because of the filing of the aforementioned suit, it becomes necessary or advisable for the State Party to come to a decision on this matter prior to the February 1984 State Party Convention, the State Party officers are delegated the responsibility for determining whether the Party shall join the suit as co-plaintiff.

ADDENDUM E

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 5, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF MARY GINGELL IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, MARY GINGELL, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a member of the State Central Committee of the Libertarian Party of

California and serve on the Executive Committee of that body. I have been a member of the State Central Committee since November 1981 and served as Chair from August 1982 to February 1984. I have been an active participant in the activities of the Libertarian Party of California since June 1981.

3. The organizations of the Libertarian Party have endorsed candidates running for school, county, or city offices in the past, including candidates running for Mayor of San Francisco, Mayor of Los Angeles, San Francisco County Board of Supervisors, Santa Cruz County Board of Supervisors, Palo Alto School Board, and Santa Barbara School Board.

4. The ability of the Libertarian Party organization to endorse candidates is crucial. Ours is a small, relatively young party. We must be free to recruit and train strong, capable candidates in primary races if we are to develop as a party. Only by being free to support primary candidates for partisan office can we hope to accomplish this objective. In school, county, and city elections, it is important for our voice to be heard, as our opinions are not being expressed by other unofficial organizations. If we are silenced, then the electorate is deprived of the Libertarian point of view.

5. The Libertarian Party of California was not formed until 1972. In 1980 we became a qualified party, governed by the provisions of the California Elections Code, and entitled to participate in primary elections. Before 1980, our party had organized itself by regions, not counties. When we became a qualified party, however, we were

forced by the provisions of the Elections Code to change our structure and our internal party rules, including a change to an organization based on counties. These provisions stated that we had to abide by the detailed statutory provisions governing the Republican Party, the Democratic Party, the American Independent Party, or the Peace and Freedom Party, all of which have goals and concerns different from those of the Libertarian Party. Although we selected the rules of the Peace and Freedom Party as the best alternative, we were still burdened by having to establish a totally new statewide organization that differed from our preferred and natural party structure.

6. The Libertarian Party has unsuccessfully tried to persuade the State Legislature to enact legislation specifically tailored to our organizational needs so that we would not have to operate under the burdensome rules governing the Peace and Freedom Party. In 1981, a bill that would have accomplished that goal was introduced by Assemblyman Robert Naylor. The Assembly Elections Committee considered this bill, but did not pass it, illustrating the danger of leaving in the Legislature the power to regulate a party organization's internal affairs.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Costa Mesa, California, this 29 day of February, 1984.

/s/ Mary T. Gingell
MARY GINGELL

ADDENDUM F

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs/Appellees,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants/Appellants.

[Filed January 16, 1985]

DECLARATION OF PETER D. KELLY

I, PETER D. KELLY, declare as follows:

1. I am and have been since February 1, 1983, the State Chair of the California Democratic Party. This is a two-year position. I am an attorney by profession, and have my law offices in the City of Los Angeles. If called as a witness, I could testify competently to the matters herein.

2. The Democratic State Central Committee is the official governing body of the Democratic party of California, as provided in Elections Code § 8777.

3. The by-laws of the Democratic State Central Committee provide that the State Chair shall be the principal executive officer and the official spokesman of the California Democratic Party. The by-laws also provide that the State Chair shall do everything necessary to carry into effect the purposes of this organization.

4. The by-laws further provide that there shall be an Executive Board which shall have all the powers and duties of the Democratic State Central Committee when it is not in actual session.

5. The membership of the Executive Board consists of the following members of the State Central Committee:

(a) The United States Senators;

(b) The Governor, Lieutenant Governor, Treasurer, Controller, Attorney General, Secretary of State and all members of the State Board of Equalization;

(c) Two members of the House of Representatives, each of whom shall be selected by the members of the House of Representatives on the State Central Committee;

(d) Two members of the State Assembly, each of whom shall be selected by the members of the Assembly on the State Central Committee;

(e) Two members of the State Senate, each of whom shall be selected by the members of the State Senate on the State Central Committee;

(f) One County Central Committee representative elected for each 100,000 registered Democrats or portion thereof resident in each county;

(g) All Assembly District Representatives;

(h) All National Committee Members of the Democratic Party;

(i) All officers and immediate past officers of the State Central Committee;

(j) The president of the California Democratic Council and of the California Federation of Young Democrats;

(k) The chair of [sic] co-chairs of each Standing Committee of the State Central Committee; and

(l) The chair of each special Caucus officially recognized by the State Central Committee.

6. On December 8, 1984, the Executive Board, pursuant to the Democratic State Central Committee by-laws, held its last quarterly meeting of 1984 in Los Angeles, California. I was present at and presided over this meeting.

7. At the December 8 meeting, a resolution was presented and adopted regarding the Democratic State Central Committee's support of, and participation in, the lawsuit entitled *San Francisco County Democratic Central Committee, et al.* v. *March Fong Eu, et al.* A true and correct copy of said resolution is attached hereto as Exhibit A.

8. The resolution provides, in part, that the State Central Committee supports said lawsuit in all of its causes of action, affirms its principles and goals, and wishes to assist in its prosecution.

9. In accordance with the December 8 resolution, I am authorized to represent that the Democratic State Central Committee, at an appropriate juncture, will seek to be joined as a plaintiff in this lawsuit with respect to those portions of the third cause of action as to which final judgment has not been entered by this Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of January, 1985 at Los Angeles, California.

/s/ Peter D. Kelly
PETER D. KELLY
State Chair
California Democratic Party

EXHIBIT A
RESOLUTION FOR CONSIDERATON AT
DEMOCRATIC STATE CENTRAL COMMITTEE
EXECUTIVE BOARD MEETING
DECEMBER 8, 1984

WHEREAS: California political parties are subject to state laws severely and excessively regulating their political speech and internal affairs;

WHEREAS: Certain of these state laws forbid political party organizations from endorsing, supporting, or opposing candidates entered in their own primaries or running for local elective office, while other state laws prescribe in extraordinary detail how political party organizations are to organize and govern themselves;

WHEREAS: These state laws substantially burden the fundamental freedoms of speech and association of California political party organizations and their members, which freedoms are guaranteed by the First Amendment to the United States Constitution;

WHEREAS: A lawsuit entitled *San Francisco County Democratic Central Committee, et al.* v. *March Fong Eu, et al.* was filed in the United States District Court for the Northern District of California in November 1983 challenging the validity of these state laws;

WHEREAS: Said lawsuit sets forth three causes of action, the first challenging the restrictions upon political party organizations' ability to endorse, support, or oppose candidates running in party primaries; the second, challenging the restrictions upon political party

organizations' ability to endorse, support, or oppose candidates running for election to school, county, and city offices; and the third, challenging certain restrictions on how political party organizations may organize and govern themselves;

WHEREAS: Plaintiffs in this lawsuit currently include the Democratic County Central Committees form San Francisco, Los Angeles, Alameda, Santa Clara, and Solano Counties; the San Francisco County Republican Central Committee, the State Central Committee of the California Libertarian Party; the chairs or former chairs of various of these central committees; as well as other prominent persons active in California politics;

WHEREAS: Plaintiffs in this lawsuit prevailed in United States District Court with respect to the first cause of action and substantial portions of the third cause of action;

WHEREAS: The District Court's decision with respect to the first and third causes of action has been appealed by defendants, and the matter is presently pending in the Ninth Circuit Court of Appeals;

WHEREAS: The District Court abstained with respect to the second cause of action, pending a ruling by the California Supreme Court in a case known as *Unger, et al.* v. *Superior Court (Unger II)*;

WHEREAS: The California Democratic State Central Committee's Executive Board resolved on October 15, 1983 to support, in principle, this lawsuit;

WHEREAS: Pursuant to Article VIII, section 1 of the by-laws of the California Democratic Party, the Executive Board of the Democratic State Central Committee has all the powers and duties of the Democratic State Central committee when, as now, that body is not in session;

AND WHEREAS: The California Democratic State Central Committee enthusiastically supports this lawsuit in all of its causes of action, affirms its principles and goals, and wishes to assist in its prosecution;

THEREFORE BE IT RESOLVED THAT: The State Party Chair has authority to act on behalf of the State Party, in consultation with the State Party officers, to support and assist in the prosecution of the lawsuit entitled *San Francisco County Democratic Central Committee, et al.* v. *March Fong Eu, et al.* and, without limiting this authority, shall be given specific authority to authorize (1) the joining of the California Democratic State Central Committee and/or its Executive Board as a co-plaintiff in this suit, at such time and in such manner as the Chair deems appropriate and feasible; (2) the filing of amicus curiae briefs or other appropriate legal papers with the courts on behalf of the Democratic State Central Committee and/or its Executive Board to set forth this body's position regarding this lawsuit and to make any appropriate legal arguments in support thereof; (3) the filing of sworn declarations testifying to these actions and to the full support of this body for this lawsuit; (4) the issuance of public statements of support for this lawsuit; and

(5) the taking of any other appropriate actions consistent with this resolution.

ADDENDUM G

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 5, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF MARY KING IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, MARY KING, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Alameda County Democratic Central Committee

(the "County Central Committee"). I have been a member of the County Central Committee since 1979 and have served as Chair since January, 1983. I have been an active participant in the activities of the Democratic Party of California since 1976.

2. The County Central Committee would endorse, support, or oppose candidates for nomination in direct primary elections, including candidates running for State Senate, State Assembly, and United States House of Representatives in June 1984 and in 1986, but for the existence of section 11702 of the California Elections Code (the "Elections Code") and the threat of enforcement of this provision by the defendants.

3. The County Central Committee would endorse, support, or oppose candidates for nonpartisan offices, including candidates running for the County Board of Supervisors, Sheriff, District Attorney, County Clerk, and County Treasurer in the 1984 and 1986 elections, but for the existence of section 6, article II of the California Constitution and section 37 of the Elections Code and the threat of enforcement of these provisions by the defendants.

4. Before the California Courts began holding that the Elections Code and the California Constitution prohibited the endorsement of candidates for nonpartisan office, we endorsed such candidates, including individuals running for the Oakland City Council and for Mayor of Oakland. We believed we were not making these elections "partisan" merely by issuing such endorsement. We did not control

who could run, nor did our endorsement or the endorsee's party affiliation appeal on the ballot.

5. One of the main functions of the County Central Committee is to inform Alameda County voters of the Democratic Party platform, the party's proposals for change, and its positions on other significant issues. Another of its main functions is to ensure that the party leadership, including elected Democratic officials, endorses the beliefs and positions of the Democratic Party of California. Because the County Central Committee is not allowed to endorse, support, or oppose candidates in direct primary elections or in elections for school, county, or city posts, it cannot educate the public about a candidate's position on issues, nor can it work to ensure that Party leaders are committed to the goals and ideals of the California Democratic Party.

6. The County Central Committee's inability to perform its educational function has greatly weakened our party and has disadvantaged the electorate. For example, our Committee would like to but has been unable to oppose a man by the name of Bob Reeder, a member of the Fremont City Council. Mr. Reeder is a registered Democrat, a fact he has publicized widely. Mr. Reeder has been quoted as saying that he registered as a Democrat because it was a wise political move, given that most of his constituents were members of that party. In fact, we believe that Mr. Reeder's positions on political issues are completely antithetical to the positions of our party. Because we are not allowed to speak out in city elections, we cannot set the record straight and

inform the voters of what we believe the facts to be. Thus, Mr. Reeder, by default, is able to use our party label to his advantage.

7. Numerous unofficial groups regularly endorse candidates in primary and nonpartisan elections in Alameda County. These groups include: (a) various political clubs affiliated with the Democratic Party, including the Hayward Demos, the MGO (Montclair Greater Oakland) Democratic Club, the Niagra Democratic Club, the Berkeley Democratic Club, and the Muleskinners Democratic Club; (b) labor organizations, such as the Communication Workers of America, the AFL-CIO, and United Teachers of Oakland; (c) political action committees such as the Berkeley Citizens Action Committee; (d) other politically active associations, such as the Fremont Democratic Forum and the National Women's Political Caucus; and (e) newspapers, such as the Daily Review, the Oakland Tribune, and the San Francisco Newspapers.

8. In contrast to the materials distributed by these groups, which contain endorsements for both partisan primary candidates and candidates for school, county, and city offices, the County Central Committee can issue mailers containing endorsements only for Propositions or Initiatives.

9. As demonstrated in paragraph 7, large numbers of individuals and groups, with widely varying political viewpoints, exercise their freedom to criticize or support candidates in Alameda County. Yet, the County Central Committee, which is the supposed leader of the Democratic Party in Alameda County, and which has among its mem-

bership (as does the Republican County Central Committee) some of the most informed and politically aware citizens, cannot say anything. This is a strange and anomalous result.

10. I became a member of the County Central Committee because I shared the political beliefs of the other members of that organization. I thought that the County Central Committee could advance these shared political beliefs far more effectively than I could as a single individual. One of the key methods available to our County Central Committee to further its shared beliefs is the issuance of endorsements and the public support of political candidates. Even as chairperson of that Committee, my individual endorsement is worth far less than the collective endorsement of the County Central Committee as a whole. Since the Committee cannot endorse in direct primary elections or in elections for school, county, or city officers, our whole purpose in associating together has been frustrated.

11. Our County Central Committee is already engaging in activities in preparation for the June 1984 primary and the November 1984 general election. If our County Central Committee were to issue endorsements in the June 1984 primary races, we would have to begin the endorsement process sometime in April. The period of time between April and June would be spent in distributing notices to the candidates of our intent to endorse, evaluating the candidates, raising money to fund a slate card or mailer, and printing and distributing these endorsement materials.

12. Our County Central Committee would adopt more flexible rules regulating the time and place of our meetings than those contained in sections 8920 and 8921 of the Elections Code. The County Central Committee has not sought to disobey these rules because of the threat of enforcement of these provisions by the defendants.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Oakland, California, this 29th day of February, 1984.

/s/ Mary King
MARY KING

ADDENDUM H

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 9, 1984]

Date: April 9, 1984
Time: 10:30 a.m.

SUPPLEMENTAL DECLARATION OF WALTER W. LAYSON IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, WALTER W. LAYSON, declare as follows:

1. I make this supplemental declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a resident of Contra Costa County, California and was,

from January 1975 to December 1978 and from January 1983 to October 1983 an elected member, and from 1979 to 1982 an appointed member of the Contra Costa County Republican Central Committee ("County Central Committee"). I have been a registered Republican since 1960 and in 1977-78 was a candidate for nomination in the 7th Congressional District of Contra Costa County. I have chaired GOP Congressional research teams, served as a political advisor in four Congressional campaigns, and was GOP county precinct chair in Contra Costa County from 1975 to 1976.

2. At the present time, I am running uncontested for the Republican nomination in the 7th State Senate District for 1984 and thus expect to be the official nominee of my party.

3. As a candidate for nomination in a Party primary, the restrictions placed on the State and County Central Committees by section 11702 of the Elections Code, forbidding the Committees from endorsing, supporting, or opposing candidates in direct party primary elections, has injured me directly.

4. Section 11702 prevents the County and State Central Committees from helping to pay my filing fee or financially to support my candidacy in any way. They cannot contribute in-kind services, such as secretarial or computer help, until after the June primary. Nor can they endorse me, which would publicize my campaign and improve upon both their and my credibility.

5. Because I am running unopposed, it is unlikely that party factionalism could develop within the County Central Committee over the endorsement of my candidacy.

6. The County Central Committee's endorsement would also have strongly benefitted me in my 1978 campaign for the Party's nomination in the 7th Congressional District.

7. In my long experience in the California Republican Party, I have found that the candidates, not the County Central Committees, run general election campaigns. Because of the complained-of provisions, the County Central Committees are too weak to manage this task. Hence, the County Central Committees have no actual or operational control over the candidate's campaign organization.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California, this 9th day of April, 1984.

/s/ Walter W. Layson
WALTER W. LAYSON

ADDENDUM I

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 5, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF LINDA POST IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, LINDA POST, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the San Francisco County Democratic Central

Committee (the "County Central Committee"). I have been a member of the County Central Committee since 1980 and have served as Chair since January, 1983. I have been an active participant in the activities of the Democratic Party of California since 1975, and have joined many unofficial Democratic clubs. From 1980 to 1982, I was a member of the Executive Committee of the Democratic State Central Committee.

2. The County Central Committee would endorse, support, or oppose candidates for nomination in direct primary elections, including candidates running for State Senate, State Assembly, and United States House of Representatives in June 1984 and in 1986, but for the existence of section 11702 of the California Elections Code (the "Elections Code") and the threat of enforcement of this provision by the defendants. In addition, as a voter, a concerned citizen , and an active member of the Democratic Party, I would like the State Central Committee to be able to endorse, support, or oppose candidates in direct primary elections, including candidates running for Governor, Lieutenant Governor, Treasurer, Controller, Secretary of State, and Attorney General. I would not only greatly benefit from knowing the position of the State Central Committee in these elections, I would also encourage and contribute to this endorsement process if that process were not prohibited by the existence of section 11702 and the threat of enforcement of this provision by the defendants.

3. The County Central Committee would endorse, support, or oppose candidates for school, county, or city offices, including candidates running for the County Board of Supervisors, BART Board,

Board of Education in the 1984 and 1986 elections, and for City Treasurer and City Attorney in 1985, but for the existence of section 6, article II of the California Constitution and section 37 of the Elections Code and the threat of enforcement of these provisions by the defendants.

4. Every year that I have been a member of the County Central Committee, someone has suggested that the County Central Committee endorse or otherwise support candidates in direct party primary and school, county, or city elections. The County Central Committee discusses this matter, and invariably concludes that it will not issue such endorsements or support or oppose any candidate in these races because of the threat of enforcement by the defendants or others.

5. Before the California Courts began holding that the Elections Code and the California Constitution prohibited political parties from endorsing candidates running for nonpartisan office, we endorsed such candidates, including individuals running for Mayor, the County Board of Supervisors and District Attorney. We believed that merely by issuing endorsements, we were not making the election "partisan." We did not control who could run, nor did our endorsement or the endorsed candidate's party affiliation appear on the ballot.

6. One of the main functions of the County Central Committee and the State Central Committee is to inform voters of the Democratic Party platform, the party's proposals for change, and their positions on other significant issues. Another of their main functions is to ensure that the

that the Party leadership, including elected officials, is responsive to the beliefs and positions of the members of the Democratic Party of California. Because the County Central Committee is not allowed to endorse, support, or oppose candidates in direct party primary or school, county, and city elections, it cannot educate the public about a candidate's position on issues, nor can it work to ensure that the Party leadership, including elected officials, are held accountable to the members of the California Democratic Party.

7. Numerous groups regularly endorse candidates in direct party primary and school, county, and city elections in San Francisco. These groups include: (a) various political clubs affiliated with the Democratic Party, including the Chinese American Democratic Club, Inc., the Harvey Milk Gay-Lesbian Democratic Club, the Alice B. Toklas Lesbian/Gay Democratic Club, District One Political Action, the Nihonmachi Democratic Club, and the District 8 Democratic Club (true and correct copies of materials distributed by the first four of these groups is appended to this declaration as Exhibit A); (b) other unofficial ad hoc political groups affiliated with the Democratic Party, including United Democrats '82 (a true and correct copy of the mailer distributed by this organization is appended to this declaration as Exhibit B); (c) labor organizations such as San Francisco C.O.P.E. (Committee on Political Education), the political arm of the AFL-CIO (a true and correct copy of a mailer distributed by this organization is appended to this declaration as Exhibit C); (d) other politically active associations, such as the Frederick Douglass Symposium (true and correct copies of a mailer from this organization is appended to this declaration as Exhibit D); (e) newspapers, such as the San Francisco

Chronicle, the San Francisco Examiner, the San Francisco Bay Guardian, and the San Francisco Progress and (f) political action committees, such as Womens' Political Fund.

8. In contrast to the materials distributed by these groups, which contain endorsements for both nonpartisan and primary candidates, the County Central Committee can issue mailers containing endorsements only for Propositions or Initiatives. A true and correct copy of one of these mailers is appended to this declaration as Exhibit E.

9. The laws banning official party endorsements or support have thus created an odd dichotomy between the permissible activities of the official political party organizations on the other hand. As demonstrated in paragraph 7, large numbers of individuals and groups with widely varying political viewpoints exercise their freedom to criticize or support San Francisco political candidates. Yet, the County Central Committee and the State Central Committee, which are the supposed leaders of the Democratic Party in San Francisco and the state, and which have among their memberships (as do their Republican counterparts) some of the best informed and most politically aware citizens, cannot say anything.

10. So long as the official political party organizations are prevented from expressing their views on political candidates, ad hoc groups "borrowing" the word "Democratic" and creating official-sounding titles will continue to have the ability to mislead voters into thinking that their slate mailer originated with, or was approved by, the official party organizations. If the County Central Committee and State

Central Committee were allowed to distribute their own endorsement literature, such confusion could be minimized.

11. In many school, county, and city elections, the race is between a candidate whom people know is a Democrat and a candidate whom people know is a Republican. In the endorsements issued by Democratic Clubs, the Clubs clearly identify themselves as being affiliated with the Democratic Party. Further, major office holders, such as Mayor Feinstein, are widely known to be Democrats.

12. I became a member of the County Central Committee because I shared the political beliefs of the other members of that organization. I thought that the County Central Committee could advance these shared political beliefs far more effectively than I could as a single individual. One of the few ways for our Committee to do this is to issue an endorsement on behalf of the entire group. My individual endorsement is worth far less than such a collective endorsement. Since the Committee cannot endorse in direct party primary elections or in elections for school, county, or city posts, however, our whole purpose in associating together has been frustrated.

13. If our County Central Committee were to issue endorsements in the June 1984 primary races, we would have to begin the endorsement process in early April. The period of time between early April and June would be spent in distributing notices to the candidates of our intent to endorse, evaluating the candidates, raising money to fund a slate card or mailer, and printing and distributing these endorsement materials.

14. Our County Central Committee would adopt rules regulating the time and place of our meetings that are more flexible than those contained in sections 8920 and 8921 of the Elections Code. As a former member of the Democratic Slate Central Committee, I would also like to abolish sections 8660, 8661, 8663, 8664, 8665, 8667, and 8669 of the Elections Code, to allow that Committee to control the method of selecting its own members. In addition, I would favor the adoption of rules regulating the time and place of State Central Committee meetings that are more flexible than those contained in section 8710 of the Elections Code. Neither I nor the County Central Committee has sought to disobey or change these rules because of their existence and the threat of their enforcement by the defendants.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at San Francisco, California, this 29th day of February, 1984.

/s/ Linda Post
LINDA POST

[Exhibits A through E Omitted]

ADDENDUM J

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 2, 1984]

Date: April 9, 1984
Time: 10:30 a.m.

SUPPLEMENTAL DECLARATION OF LINDA POST IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, LINDA POST, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chair of the San Francisco County Democratic Central Committee (the "County Central Committee"). I was duly elected to the position of chair by a unanimous vote of the full County Central Committee in January 1983. I have been a member of the County Central Committee since 1980 and have served as Chair since January, 1983.

2. I have read the memorandum filed by the defendants in opposition to Plaintiffs' Motion for Summary Judgment. The defendants' attempt to characterize the plaintiffs as entities and individuals who "have lost power struggles" has no basis in fact. The Democratic County Central Committees for San Francisco, Los Angeles, Alameda, Santa Clara, Solano and Placer Counties are very much in the mainstream of the California Democratic party and are well respected within the State Democratic party. Similarly, I consider myself to be very much in the mainstream of the State and local Democratic party. I have worked with all elements of the party, elected officials, and groups that comprise the constituencies within the party. For example, I have good working relations with Mayor Diane Feinstein; Congresswomen Sala Burton and Barbara Boxer; Peter Kelley, State Chair of the California Democratic party; Peter Kelley's predecessors; and the great majority of the elected officials in San Francisco.

3. The defendants' characterization of the function of county central committees is absolutely wrong. The county central committees do much more than just campaign in the November general elections for their party nominees. In fact, county central committees can and do perform the following functions: (a) voter registration drives; (b) getting the vote out on election day; (c) analyzing local and state ballot propositions, taking positions on such propositions, and publicizing our stands through slate cards, press releases, and other communica-

tions; and (d) taking action on a continuing basis on numerous issues brought to the county central committee by community groups.

4. Prior to the *Unger* decision, we were also able to and did endorse candidates running in school, county, and city elections.

5. Although the San Francisco County Democratic Central Committee is part of the Democratic party, we are an independent working entity, elected locally. The Elections Code provides for the separate election of County Central Committee members. We have our own by-laws separate from those of the State Central Committee. We hire our own staff people, and are empowered and do raise funds independent of the State Central Committee. We can sue and be sued as a separate entity.

6. Differences of opinion regarding issues and candidates is part of democracy, and part of the political process. The full airing of different views is necessary. That's politics. On any issue put before our County Central Committee, there could be a difference of opinion. For example, in the November 1983 elections, we took a stand on each of the sixteen City propositions on the ballot. (*See* Exhibit A to my first declaration, filed March 5, 1984.) The defendants' logic would lead to the result that we should not have had the right to endorse on any of those propositions, because there was a "faction" created every time we had a difference of opinion. That is not what I understand democracy is all about.

7. We have had internal debates within our Committee many times in the past on various issues, but such debate has never "factionalized" the Committee before so as to disable it or to render it ineffective in the general election.

8. If we were afraid that endorsing on a given issue or candidate would be too divisive within our Committee, we could decide to not take a position, which would be our right, and which we have done in the past. The defendants would have the State of California dictate that we refrain from taking positions in all cases. This is paternalism. We are a responsible body that is capable of making the decision "endorse/not endorse" by ourselves.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of April, 1984, at San Francisco, California.

/s/ Linda Post
LINDA POST

ADDENDUM K

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 5, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF THOMAS ROMERO IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, THOMAS ROMERO, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Placer County Democratic Central Committee (the

"County Central Committee"). I have been a member of the County Central Committee since 1973 and have served as Chair from 1977 to June 1978 and from June 1980 to the present. I have been an active participant in the activities of the Democratic Party of California since 1973.

2. The County Central Committee would endorse, support, or oppose candidates for nomination in direct primary elections, including candidates running for State Senate, State Assembly, and United States House of Representatives in June 1984 and in 1986, but for the existence of section 11702 of the California Elections Code (the "Elections Code") and the threat of enforcement of these provisions by the defendants. Our Committee would have endorsed a candidate for United States House of Representatives in 1980 if it had been legal to do so.

3. One of the main functions of the County Central Committee is to inform Placer County voters of the Democratic Party platform, the party's proposals for change, and the party's positions on other significant issues. Our County Central Committee has even formulated its own platform, a true and correct copy of which is appended hereto as Exhibit A. Another of the County Central Committee's main functions is to ensure that the party leadership, including elected officials, endorses the beliefs and positions of the California Democratic Party.

4. Because the County Central Committee is not allowed to endorse, support, or oppose candidates in primary elections, it cannot educate the public about a candidate's position on issues, including issues

contained in our Committee's platform, nor can it work to ensure that Party leaders are committed to the goals and ideals of the California Democratic Party. We cannot, for example, oppose the state legislators representing our county who voted to impose a fee on community college students, a position opposed to our Committee's platform. Nor can we even educate the public about the legislators' voting records.

5. On numerous occasions, voters have called me up, as Chair of the County Central Committee, to ask what our position is in regard to candidates in primary elections. I have had to respond that the County Central Committee is forbidden by law from commenting on these or other candidates for partisan office.

6. Numerous unofficial groups regularly endorse candidates in primary elections in Placer County. These groups include the County Taxpayers' Association, the Placer County Sheriffs' Association, labor organizations such as C.O.P.E. and the American Federation of Teachers, individual campaign organizations, and newspapers, such as the Auburn Journal, the Roseville Press Tribune, the Colfax Record, and the Lincoln News Messenger.

7. In contrast to these groups, which can endorse primary candidates, the County Central Committee must remain silent. It is unfair that the group most interested in the party platform and the party's position on issues cannot express its opinion while dozens of other individuals and groups freely publicize their views.

8. I became a member of the County Central Committee because I shared the political beliefs of the other members of that organization. I thought that the County Central Committee could advance these shared political beliefs far more effectively than I could as a single individual. Even as chairperson of that Committee, my individual endorsement is worth far less than the collective endorsement of the County Central Committee as a whole. Since the Committee cannot endorse in primary campaigns, our whole purpose in associating together has been frustrated.

9. Our County Central Committee would adopt more flexible rules regulating the time and place of our meetings than those contained in sections 8920 and 8921 of the Elections Code. We would also like to abolish sections 8660, 8661, 8663, 8664, 8665, of the Elections Code, giving the Democratic Party control over the method of selecting the members of its central policy-making organization. In addition, we would favor the adoption of more flexible rules regulating the time and place of State Central Committee meetings contained in section 8710 of the Elections Code. Neither I nor the County Central Committee has sought to disobey these rules because of the threat of enforcement of these provisions by the defendants.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Auburn, California, this 28 day of February, 1984.

/s/ Thomas Romero
THOMAS ROMERO

[Exhibit A Omitted]

ADDENDUM L

[Designation of Counsel Omitted]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851
[D. Ct. No. C-83-5599-MHP]

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs/Appellees,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants/Appellants.

[Filed September 15, 1987]

DECLARATION OF MARK W.A. HINKLE IN OPPOSITION TO APPELLANTS' MOTION FOR STAY OF MANDATE

I, MARK W.A. HINKLE, declare as follows:

1. I am and have been since February 1986 the Chair of the Libertarian Party of California. I have been a member of the Executive Committee of the State Central Committee of the Libertarian Party since 1978. I have been since 1980 a member of the Santa Clara County Libertarian Central Committee.

2. The Libertarian Party is a named plaintiff in all three causes of action in the above-captioned lawsuit, and supports this lawsuit wholeheartedly.

3. If the August 18, 1987 decision of the Ninth Circuit Court of Appeals goes into effect in the near future, I expect the Libertarian Party State Central Committee, and the Libertarian Party's county central committees, will actively consider endorsing, supporting, or opposing candidates running for the Libertarian nomination for statewide, Assembly, State Senate, and Congressional offices in the June 1988 primaries.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of September, 1987, at San Jose, California.

/s/ Mark W.A. Hinkle
MARK W.A. HINKLE

ADDENDUM M

[Designation of Counsel Omitted]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851
[D. Ct. No. C-83-5599-MHP]

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs/Appellees,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants/Appellants.

[Filed November 16, 1987]

SUPPLEMENTAL DECLARATION OF PETER D. KELLY IN OPPOSITION TO APPELLANTS' RENEWED MOTION FOR STAY OF MANDATE

I, PETER D. KELLY, declare as follows:

1. On September 15, 1987, I submitted a declaration to this Court in opposition to appellants' original Motion for Stay of Mandate. Since that time, this Court has denied appellants' petition for rehearing, and appellants have filed a new Motion for Stay of Mandate. Because of the importance of this lawsuit to the California Democratic Party, I file this supplemental declaration . For the convenience of the Court, I

have, where appropriate, repeated portions of my September 15, 1987 declaration herein.

2. I am and have been since January 1987 the Chair of the California Democratic Party. I previously held that position from January 1983 through January 1985. I have been a member of the Executive Board of the California Democratic Party since 1981 and a member of the Democratic Party's State Central Committee since 1971. At various times between 1971 and 1976, I served as the Democratic Party's Executive Director, Southern California Executive Director and Finance Director. I served as General Counsel to the California Democratic Party from 1977 to 1981.

3. I am an attorney by profession, and am a partner in the law firm of Kelly, Aldrich, McAuliffe, Siemens & Hentschel, which is located in Los Angeles, California, and Washington, D.C.

4. The Democratic State Central Committee is the official governing body of the California Democratic Party, as provided in Elections Code § 8777. The By-Laws of the Democratic State Central Committee provide that there shall be an Executive Board which shall have all the powers and duties of the Democratic State Central Committee when it is not in actual session. The Executive Board has approximately 180 voting members.

5. On December 8, 1984, the Executive Board, at one of its regularly scheduled quarterly meetings, adopted a resolution providing in relevant part that the California Democratic Party State Central

Committee supports this lawsuit in all of its three causes of action, affirms its principles and goals, and wishes to assist in its prosecution.

6. In the hope that plaintiffs ultimately would prevail in this lawsuit, Ms. Betty Smith, who was Chair of the California Democratic Party from January 1985 to January 1987, established a Rules Revision Task Force in approximately Spring 1985. This Task Force met on numerous occasions and spent countless hours studying how the party should reorganize itself if the plaintiffs ultimately prevail on the Third Cause of Action, and studying possible endorsement procedures if plaintiffs ultimately prevail on the First Cause of Action. The Rules Revision Task Force has presented its final report to the California Democratic Party's 25-member Rules Committee.

7. I have asked the Rules Committee, which is now studying the Rules Revision Task Force's final report, to make a final recommendation to the Executive Board at its January 1988 quarterly meeting. Assuming this Court's August 18, 1987 decision, as amended on October 29, 1987, is not stayed, the Party's goal is to enact rules and procedures at the January 1988 meeting, which would enable the Party to exercise its power of endorsement in the June 1988 primaries.

8. The Rules Committee has discussed the Task Force's final report and the issue of endorsement procedures at several meetings, including June 5, 1987, September 12, 1987, and October 9, 1987. The Rules Committee also scheduled three regional public hearings to solicit comments from interested Democrats on appropriate endorsement procedures for the 1988 primary elections. The Rules Committee

Committee received testimony from interested Democrats in Fresno on October 24, 1987 and in San Francisco on October 31, 1987, and will take further testimony in Santa Ana on November 14, 1987. The Rules Committee is set to meet again on December 5, 1987 to discuss the public comments, and to come up with a final set of recommendations to be presented on January 9, 1988 to the Executive Board of the State Central Committee. The Executive Board will then adopt a final set of rules for endorsement procedures for the June 1988 primaries. Those procedures will include actual endorsements at the next annual California Democratic Party convention, which will be held on March 18 - 20, 1988, in Palm Springs, California.

9. It is the wish of the California Democratic Party to proceed to endorse in the June 1988 primaries. There is great enthusiasm among the approximately 180 members of the Executive Committee and among the 1,700 members of the State Central Committee for the California Democratic Party to exercise the party's right to endorse, support, or oppose candidates running in the June 1988 primaries.

10. The State Party has received numerous contacts from among the 58 Democratic County Central Committees and the 80 Assembly District Committees of the California Democratic Party, expressing enthusiasm for being able to participate in the endorsement process, seeking guidance on how to participate in the endorsement process, and inquiring about when the State party will complete drafting applicable rules.

11. The level of inquiry in how to become a member of the State Central Committee has markedly increased since the time of the publicity surrounding this Court's original decision in June 1986, and I expect that competition for seats on the State Central Committee will increase substantially in the future.

12. Since the publication of this Court's August 18, 1987 decision, I have observed a substantial increase in the level of interest in the official party organization by candidates and potential candidates for partisan office in California. For example, candidates and potential candidates in the last three months have shown increased interest in spending time with, speaking before, and in participating in the activities of, the State Party.

13. Since 1971, I have held an official position of one kind or another, without interruption, with the California Democratic Party. During those years, I have met literally thousands of Democrats involved at all levels of the party structure. Never before have I seen the members of the official bodies of the California Democratic Party so enthusiastic about their participation in the political process as in the last three months. The reason for this marked increase in enthusiasm is the expectation of party members that, as a result of this lawsuit, they are about to become a much more important factor in California's political process.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of November, 1987, at San Francisco, California.

/s/ Peter D. Kelly
PETER D. KELLY

ADDENDUM N

[Designation of Counsel Omitted]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851
[D. Ct. No. C-83-5599-MHP]

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs/Appellees,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants/Appellants.

[Filed November 16, 1987]

DECLARATION OF CAROLE V. MIGDEN IN OPPOSITION TO APPELLANTS' RENEWED MOTION FOR STAY OF MANDATE

I, CAROLE V. MIGDEN, declare as follows:

1. I am and have been since July 1986 the Chair of the San Francisco County Democratic Central Committee, plaintiff in the above-captioned litigation. I have been a member of the county committee since January 1985.

2. The San Francisco County Democratic Central Committee is a plaintiff in all three causes of action in this lawsuit, and wholeheartedly supports the goals of this lawsuit.

3. Our county committee is composed of twenty-four elected members, who are elected by registered Democrats in the 16th, 17th, and 19th Assembly Districts, as well as nine other members who are appointed by Democratic elected public officials.

4. There is a very high level of enthusiasm among the county committee members for the committee to participate in the endorsement process for the 1988 Democratic Party primary elections. We believe that the county committee can play an important role in helping educate the local electorate regarding the qualifications of Democratic candidates.

5. The county committee and its members have followed the progress of this lawsuit very closely over the past several years. As a result of the August 1987 decision in this case by the Ninth Circuit Court of Appeals, our committee members are very excited about the prospect of being able to speak out on the qualifications of Democratic candidates running for partisan office.

6. If the August 1987 decision of the Ninth Circuit Court of Appeals is not stayed, then I expect our county committee, working together with the State Democratic Party, to participate to the fullest

extent possible in the endorsement process for the June 1988 primary elections.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of November, 1987, at San Francisco, California.

/s/ Carole V. Migden
CAROLE V. MIGDEN

ADDENDUM O

No. 87-1269

In the
Supreme Court of the United States
October Term, 1987

MARCH FONG EU, Secretary of State
of the State of California, *et al.*,
Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC
CENTRAL COMMITTEE, *et al.*,
Appellees.

On Appeal from the United States
Court of Appeals for the Ninth Circuit

DECLARATION OF CHARLES H. BELL, JR.

I, Charles H. Bell Jr., declare as follows:

1. I am a partner in the law firm of Nielsen, Merksamer, Hodgson, Parrinello and Mueller which provides general counsel to the State Central Committee of the California Republican Party. I am the partner principally responsible for performing the duties of general counsel to the Republican State Central Committee.

2. I have been authorized by the chairperson of the State Central Committee to provide this declaration concerning the activities of the Committee on the issue of pre-primary endorsements by official party organizations.

3. This supplements my declaration of January 26, 1988 (Jurisdictional Statement and Volume I of the Appendix, pp. 70a-75a).

4. At its February 19-21, 1988 Convention at Santa Clara, California, the California Republican Party ("Republican State Central Committee") amended its Bylaws, inter alia, adopting new Article VII relative to the subject of endorsements in partisan primary elections. (See Attachment "A" hereto).

5. Article VII section 7.01 prohibits endorsements by the Republican State Central Committee and local Republican County Central Committees in contested elections for designated partisan elective offices at the direct primary election.

6. Article VII Sections 7.02 and 7.03 provides for endorsements by the Republican State Central Committee and/or local Republican County Central Committees in special elections for the same designated partisan elective offices.

7. The above-referenced provisions do not constitute a blanket ban on such endorsements: First, endorsements are permitted in special elections subject to the provisions for action and concurrence set forth in Article VII, Sections 7.02 and 7.03. Second, Article VII does not

bar endorsements in uncontested races for such partisan elective offices. Third, the Article VII, Section 7.01 provision may be suspended by a 2/3 vote of the Republican State Central Committee. (Bylaws, Article IX, Section 9.06) Finally, Article VII may be amended by a 2/3 vote of the committee (Amended Bylaws, Article XIII, Section 13.01).

8. The foregoing action was taken by the Committee in response to the new freedom from state regulation which has resulted from the lower court's decision in the case on appeal herein. The substance of the Committee's actions reflect the policy decision of the Committee as to what is in its own best interests and in the interests of the Republican Party as a whole at the present time. The fact that the result was similar to (though as noted above not identical to) that which obtained under state law does not necessarily means [sic] that the Committee concurs in the need for the kind of governmental regulation represented by the provisions invalidated by the lower court herein.

9. Finally, the Republican State Central committee also adopted amendments to Article I, Section 1.01 of its Bylaws (see Attachment "A" hereto) which made substantial changes in the composition of the Committee from those previously required by Sections 9160 and 9160.5 of the California Elections Code, which were invalidated by the lower court. These charges, likewise, reflect the policy decision of the Committee as to what composition is in the best interest of the Committee and the Republican Party as a whole at this time.

The foregoing is true and correct and of my personal knowledge.

Executed under penalty of perjury at Sacramento, California this 23rd day of March, 1988.

/s/ Charles H. Bell, Jr.
CHARLES H. BELL, JR.

ATTACHMENT A

PROPOSED AMENDMENTS TO 1987-88 STANDING RULES AND BYLAWS (as adopted 2/22/87 and amended 9/27/87 and further amended 2/21/88)

PREAMBLE

The CRP does hereby adopt these Bylaws which are comprised of the rules for the composition of the Republican State Central Committee, the election of officers, the management and operation of the Party, the development and promulgation of the Party platform and policies and the rules for the selection of members of the Electoral College to cast votes for President of the United States following the quadrennial Presidential election.

PURPOSE

Be it resolved, that the California Republican Party principles are based upon the precepts of our Nation's Founding Fathers as reflected in the United States Constitution and the Bill of Rights with particular emphasis upon the rights of the individual, limited governmental powers and equity under the law.

The California Republican Party affirms its belief in the free enterprise economic system, private property ownership, individual rights and representative government.

The California Republican Party Central Committee is committed to carry out its charge under the law, to conduct Republican Party political campaigns in behalf of party candidates.

Be it further resolved that the California Republican Party be open, accessible to all and answerable to the people of the State of California.

ARTICLE I
Members

Section 1.01(a) REGULAR AND APPOINTIVE MEMBERS

1. The following shall be regular members of the Committee:

(A) The Republican nominees for each of the following partisan elective offices at the last election held for each office: Governor; Lieutenant Governor; Attorney General; Secretary of State; Controller; Treasurer; Member of the State Board of Equalization; Member of the State Senate; Member of the State Assembly; Member of the United States House of Representatives; and United States Senator.

(B) The Chairman, the Vice Chairman, the immediate Past Chairman of the California Republican Party; and the four persons who most recently served as the Immediate Past Chairman of the California Republican Party.

(C) The Republican National Committeeman and the Republican National Committeewoman.

(D) The Chairman of each Republican County Central Committee;

(E) The Chairman, or the designee of the Chairman, of each statewide Republican volunteer organization chartered by the California Republican Party.

2. The following shall be appointive members of the Committee:

(A) Twelve persons appointed by each Republican nominee who is elected at the last election for the following offices: Governor, Lieutenant Governor, Attorney General, Secretary of State, Controller, Treasurer, United States Senator, and a Member of the State Board of Equalization.

(B) Eight persons appointed by each Republican nominee who is elected a Member of the State Senate, the State Assembly, and the United States House of Representatives.

(C) Twelve persons appointed by the Chairman of the California Republican Party.

(D) Four persons appointed by each of the following party officials: The Vice Chairman of the California Republican Party, the

Republican National Committeeman, and the Republican National Committeewoman.

(E) Four persons appointed by each Republican County Central Committee Chairman.

(F) One person appointed by each nominee for a partisan elective office designated in Section 1.01(a)(1)(A) if the nominee's percentage of the vote exceeds by five percent the percentage of Republican registration in the district, or the state if the office is a statewide elective office.

(G) Persons appointed by each nominee to a partisan elective office who was not elected at the last election for that office, according to the following formula:

(1) One appointment if the nominee received 30 percent or more of the vote for that office;

(2) Three appointments if the nominee received 35 percent or more of the vote for that office.

(3) Five appointments if the nominee received 45 percent or more of the vote for that office.

(4) In addition to subsections (1), (2), and (3), one appointment for each 5,000 new Republicans registered by the nominee if the registrations were submitted through the California Republican

party Operation Bounty program and were not counted in any committee's Republican registrations submitted through the Operation Bounty program during the same election cycle.

(H) Persons appointed by statewide Republican volunteer organizations chartered by the California Republican Party, according to the following formula:

(1) One person appointed by each of the organizations.

(2) Two appointments by each of the following organizations: California Federation of Republican Women; California Republican Assembly; California Republican League; California Young Republicans; and California College Republicans.

(3) In addition to subsections (1) and (2), one appointment each 5,000 new Republicans registered by the volunteer organization and submitted through the Operation Bounty program including registrations submitted by County Central Committees attributable to the volunteer organization, during the last two-year election cycle.

(I) Persons appointed or elected by Republican County Central Committees, in the manner determined by that Committee, according to the following formula:

(1) One appointment for each county in which the Republican Party has a plurality or better of the registered voters in the county at the close of registration prior to the general election.

(2) In addition to subsection (1), one appointment (up to a cumulative total of 4) for each county in which the Republican nominee for President of the United States, for Governor and United States Senate receives 25,000 votes more than his nearest general election opponent at the last election for each such office.

(3) In addition to subsections (1) and (2), one appointment for each 5,000 new Republicans registered, within that county during the last two-year election cycle and submitted by the County Central Committee through the Operation Bounty program, excluding those counted as part of a nominee's registrations pursuant to subsection (F).

Section 1.01(b) TERM OF MEMBERSHIP

(1) The term of each regular member designated in Section 1.01(a)(1)(A) shall commence upon his or her nomination to the qualifying office and shall be for a period of two years until his or her successor is nominated. In the case of a regular member who is nominated for partisan elective office at a special election, the term shall commence upon his or her nomination for that office and shall continue until the nomination of his or her successor thereafter. In the case of regular members nominated for partisan elective offices with a

four year term, they shall serve successive two-year terms, as appropriate.

(2) The term of each regular member designated in Section 1.01(a)(1), subsections (B) through (E) inclusive, shall commence two days after his or her election to the qualifying office and shall continue until the day after his or her successor is elected. In case of the National Committeeman and National Committeewoman, they shall serve successive two-year terms commencing September 1 of each even-numbered year.

(3) The term of an appointive member shall be two years and shall commence on the first day of the organizational convention held in each odd-numbered year and shall end the day before the next organizational convention.

(4) In the case of persons appointed by a Chairman or Vice Chairman, they shall serve from the day on which they are appointed until the day before the convening of the next organizational convention.

Section 1.01(c) MEMBERSHIP

A person shall have no more than one membership.

If a person holds a partisan elective office, and becomes a nominee for a second partisan elective office, he shall retain the membership of the elected office.

If a person holds membership as a nominee, and becomes a nominee for a second partisan elective office, he shall retain membership based upon the second nominee position.

Except as provided above, if a person attains the right to serve as a regular member by election to more than one office designated in Section 1.01(a)(1), the person shall hold membership based upon the priority order set forth in Section 1.01(a)(1).

In all of the above situations, the other membership shall be considered vacant due to ineligibility.

Section 1.01(d) VACANCIES

A vacancy shall exist in a regular or appointive membership if the member: is ineligible for the reason set forth in Section 1.01(c) of these Bylaws, resigns, dies, ceases to be registered to vote as a Republican, is certified as incapacitated, or is removed from the Committee pursuant to Section 1.02.

If a regular member vacates his or her membership, a vacancy shall exist in the offices of appointive members who were appointed by that regular member, which shall be filled by his or her successor.

Section 1.01(e) FILLING OF VACANCIES

(1) A vacancy in an appointive membership shall be filled by the regular member who has the power to make the appointment pursuant to these Bylaws, and shall be for the balance of the term of the vacant membership.

(2) A vacancy in a regular membership shall be filled in the following manner:

(A) Vacancies in the nominees for the offices of Governor, Lieutenant Governor, Attorney General, Secretary of State, Controller, Treasurer, Member of the State Board of Equalization, United States Senator and Republican National Committeeman and Republican National Committeewoman, or any other vacancy not specifically provided in this section or filled as provided in this section, shall be filled by the appointment of the Chairman of the California Republican Party, with the concurrence of a majority of the Committee or the Executive Committee.

(B) Vacancies in the nominees for the office of Member of the State Senate, Member of the State Assembly or Member of the United States House of Representatives shall be filled by the election of the Republican County Central Committee which has the largest number of registered Republicans of any county which has jurisdiction over that office. An election to fill the vacancy shall be held not later than 60 days after notice of the vacancy is sent by the Committee to the appropriate Republican County Central Committee(s). A vacancy in

such office shall be filled only by a person who is a registered Republican voter within the Senate, Assembly or Congressional district to be represented.

Section 1.01(f) APPOINTMENTS

An appointment to membership, to be effective for any convention or meeting of the Committee, shall be made in writing by the person or Committee authorized to make such appointment, and shall be made either by personal delivery, guaranteed overnight delivery, or by delivery by first-class mail, postage prepaid, to the office of the Committee set forth in Article VII of these Bylaws, and shall be postmarked no later than 10 calendar days before the date on which the convention or meeting convenes.

Section 1.02 ASSOCIATE MEMBERS AND YOUTH ASSOCIATE MEMBERS.

Each regular member of the Committee may appoint the following: (a) Four persons at least one of whom shall be between 18 and 30 years of age. There shall be designated as Associate Members of the Committee. (b) Two persons each of whom shall be between the ages of 16 and 21 years and shall be a registered Republican or shall have indicated his intention to affiliate with the Republican Party upon reaching voting age. They shall be designated as Youth Associate Members of the Committee. Each appointment shall be made in writing signed by the regular member and filed with the Committee. Associate Members shall have all of the privileges, rights, and duties

of other members, except that they shall be entitled to vote only when designated, qualified, and acting as a proxy for a member at any regular committee or standing committee meeting. Youth Associate Members shall have all privileges, rights, and duties of other Associate Members. However, a Youth Associate Member not registered with the Republican Party shall not be designated as a proxy and be allowed to vote. Associate Members, once appointed, shall continue to serve as Associate Members during successive terms of the Committee upon the condition that all dues required by these Bylaws are paid on a current basis. This section shall in no way affect the right of each Regular Member to make additional appointments pursuant to subsection (a) to each successive Committee.

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ARTICLE VII
ENDORSEMENTS

Section 7.01. PRE-PRIMARY ENDORSEMENTS FOR PARTISAN ELECTIVE OFFICE/DIRECT PRIMARY

Neither the Committee nor any Republican County Central Committee shall endorse, support or oppose any candidate for the Republican nomination in a contested election for any partisan elective office at a direct primary election, except as specified in Section 7.02 with respect to a special election for nomination or election to a partisan elective office.

Section 7.02 PRE-PRIMARY ENDORSEMENTS FOR PARTISAN ELECTIVE OFFICE/SPECIAL PRIMARY ELECTION

Where there is more than one Republican candidate for nomination for election in a special primary election, the Committee shall not endorse, support or oppose any candidate for the Republican nomination or election to any partisan elective office in such a special election, except in the following manner and circumstances:

(a) written notice of the proposed action has been given at least ten (10) days in advance of the meeting of the Board of Directors to all persons entitled to vote and to all Republican candidates for nomination or election to any office which may be the subject of Committee action;

(b) a hearing is held and the candidates affected are given an opportunity to appear; and

(c) one of the following situations occurs:

(1) a candidate receives a three-fourths (3/4) majority vote of the Board of Directors, which vote is in concurrence with a previous endorsement, support or opposition voted by the Republican County Central Committee(s) having jurisdiction over the affected district office, as provided in Section 7.03; or

(2) if the Republican County Central Committee(s) having jurisdiction over the affected district office has (have) not voted to

endorse, support or oppose a candidate for the affected district office as provided in Sections 7.03 at least thirty (30) days prior to the special primary election, a candidate receives a three-fourths (3/4) majority vote of the Board of Directors.

Section 7.03 REPUBLICAN COUNTY CENTRAL COMMITTEE PRE-PRIMARY ENDORSEMENTS FOR PARTISAN ELECTIVE OFFICE/SPECIAL PRIMARY ELECTIONS

Where there is more than one Republican candidate for nomination or election in a special primary election, no Republican County central Committee shall endorse, support or oppose any candidate for nomination or election at a special primary election except in the following manner and circumstances:

(1) notice of the proposed action is given at least thirty (30) days in advance of the Central Committee meeting to all persons entitled to vote and to all candidates for nomination to any office which may be the subject of committee action;

(2) a hearing is held and the candidates affected are given an opportunity to appear;

(3) a candidate receives a two-thirds (2/3) majority vote; and

(4) the action is concurred in by all other Republican County Central Committees which have jurisdiction over the affected election district,

in compliance with the provisions of subsections (1) through (3) above.

Section 7.04 DEFINITIONS

(a) "Partisan elective office" includes the offices of President of the United States, Governor, United States Senator, Lieutenant Governor, Attorney General, Secretary of State, Controller, Treasurer, Member of the State Board of Equalization, Member of the United States House of Representatives, Member of the State Senate; Member of the State Assembly; and member of the Republican County Central Committee.

(b) "District office" means Member of the United States House of Representatives, Member of the State Senate, and Member of the State Assembly.

ADDENDUM P

No. 87-1269

In the
Supreme Court of the United States
October Term, 1987

MARCH FONG EU, Secretary of State
of the State of California, *et al.*,
Appellants

v.

SAN FRANCISCO COUNTY DEMOCRATIC
CENTRAL COMMITTEE, *et al.*,
Appellees.

On Appeal from the United States
Court of Appeals for the Ninth Circuit

**DECLARATION OF MARK W.A. HINKLE
IN SUPPORT OF
APPELLEES' MOTION TO AFFIRM OR TO DISMISS**

I, MARK W.A. HINKLE , declare as follows:

1. I was the chair of the Libertarian Party of California from February, 1986 until February 15, 1988. I am and have been a member of the Executive Committee of the State Central Committee of the Libertarian Party since 1978.

2. On September 15, 1987, I submitted a declaration to the Ninth Circuit Court of Appeals in Opposition to Appellants' Motion for Stay of Mandate. For the convenience of this Court, I am repeating in this declaration portions of my earlier declaration.

3. The Libertarian Party is a named plaintiff in all three causes of action in the above-captioned lawsuit, and supports this lawsuit wholeheartedly.

4. During my term as chair of the Libertarian Party, I monitored the developments in this lawsuit. In December 1987, I was notified that the United States Supreme Court had denied Appellants' Motion for Stay of Mandate, thereby clearing the way for the Libertarian Party to exercise its right of endorsement in partisan primary elections.

5. On February 12-15, 1988, the Libertarian Party held its annual convention in San Diego. At this annual convention, the Libertarian Party exercised its right of endorsement. Specifically, the Libertarian Party endorsed the candidacy of Mr. Jack Dean, who will be running in the June 1988 Libertarian Party primary for the office of United States Senator.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of March, 1988 at San Jose, California.

/s/ Mark W.A. Hinkle
MARK W.A. HINKLE

ADDENDUM Q

No. 87-1269

In the
Supreme Court of the United States
October Term, 1987

MARCH FONG EU, Secretary of State
of the State of California, *et al.*,
Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC
CENTRAL COMMITTEE, *et al.*,
Appellees.

On Appeal from the United States
Court of Appeals for the Ninth Circuit

**DECLARATION OF PETER D. KELLY
IN SUPPORT OF APPELLEES'
MOTION TO AFFIRM OR TO DISMISS**

I, PETER D. KELLY, declare as follows:

1. In the above-captioned litigation, I have filed the following declarations:

a. On January 16, 1985, a Declaration with the District Court, notifying appellants and the court that although the California

Democratic Party was not a plaintiff at the time the complaint was filed, it subsequently passed a resolution on December 8, 1984 that declared its support for this lawsuit in all three causes of action, and its intention to be joined as a plaintiff in the lawsuit with respect to those portions of the third cause of action not resolved on summary judgment;

b. On September 15, 1987, a Declaration with the Ninth Circuit Court of Appeals in Opposition to Appellants' Motion for Stay of Mandate; and

c. On November 16, 1987, a Supplemental Declaration with the Ninth Circuit Court of Appeals in Opposition to Appellants' Renewed Motion for Stay of Mandate.

2. In my capacity as chair of the California Democratic Party from January 1983 through January 1985, and, again, from January 1987 through the present, I have followed closely the developments in this lawsuit. After this Court, by the December 4, 1987 order of Justice Sandra Day O'Connor, denied Appellants' Motion to Stay Mandate, the California Democratic party proceeded with its plans to evaluate and endorse Democratic candidates running in the June, 1988 partisan primaries.

3. On January 9, 1988, the Executive Board of the State Central Committee adopted a final set of rules governing the endorsement procedures for the June, 1988 primaries. These rules have been incorporated into the party's by-laws as Article 11, a true and correct

copy of which is attached hereto as Exhibit A. (The copy of Article 11 that was submitted by the Attorney General in connection with Appellants' Jurisdictional Statement, is not the final version.)

4. Article 11 provides for the party's possible endorsement of candidates seeking the Democratic nomination for any partisan office other than the President of the United States.

5. Article 11 provides that the question of endorsements of Democratic candidates for state-wide offices, such as Governor, Lieutenant Governor, State Attorney General, Controller, and United States Senator, is addressed directly by the entire State Central Committee.

6. The question of endorsements for all offices other than state-wide offices, for example, State Assembly, State Senate, and United States Congress, are initially made in regional pre-endorsing conferences. The voting participants at each pre-endorsing conference are: all State Central Committee members resident in the district in question, all County Central Committee members resident in the district, and the designated assembly district representatives from other Democratic clubs and organizations. If a particular candidate at a regional pre-endorsing conference receives 70% or more of the votes, the candidate's name is then eligible to be placed on the consent calendar of the full State Central Committee's endorsing convention.

7. Thus, Appellants' statement that our party's by-laws "virtually prohibit pre-primary endorsements by party county central committees" is misleading. In fact, county central committee members play a vital role in the evaluation and endorsement of candidates running in local partisan races.

8. The reason county central committees participate through regional conferences is that often times, partisan districts overlap county lines. The regional endorsement procedure avoids having multiple county central committee endorsements in the same race, which could lead to voter confusion and to dilution of the impact of endorsement.

9. Pursuant to Article 11, sixteen regional pre-endorsing conferences were held on February 20-21, 1988 throughout the State of California.

10. On March 18-20, 1988, the Democratic Party held its annual convention in Palm Springs. The major purposes of this annual convention were to endorse Democratic candidates for the numerous partisan offices and to adopt the party's platform. As a result of the procedures described above, we endorsed over 125 candidates for partisan office.

11. Appellants, in their Jurisdictional Statement, state that the California Democratic Party attempted to restore the prohibition on pre-primary endorsements, following this Court's denial of stay of mandate. Nothing could be further from the truth. As I have set forth in my prior Declarations, and as I have described above, the pre-primary endorsement is a privilege that the California Democratic Party has

has struggled to obtain for many years. The March 18-20 convention was widely hearalded as our party's first endorsing conference. Ironically, the Attorney General himself was present at our annual convention and was a featured speaker.

12. Based on my many years of involvement in the State Democratic Party, I can say that the privilege of pre-primary endorsements has revitalized the Democratic Party. Since the adoption of the party's endorsement rules in January 1988, there has been considerably more interest at the grass roots level in participating in party activities. In addition, elected Democratic public officials have been markedly more solicitous of the views of the California Democratic Party. These are two of the objectives the endorsing privilege was designed to achieve.

13. Now that the California Democratic Party is free to adopt such organizational rules as it believes best serve its interests, I have directed the Rules Committee to prepare their recommended changes in the by-laws regarding, among other items, procedures for selecting the members of the State Central Committee. The Rules Committee will submit their recommendations to the Executive Board in August 1988, which I am confident will result in substantial improvements in the internal organization of our party structure.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California, this 28th day of March, 1988.

/s/ Peter D. Kelly
PETER D. KELLY

EXHIBIT A

ARTICLE II

ENDORSEMENT OF CANDIDATES FOR PARTISAN AND NONPARTISAN OFFICE

Section 1. PRESIDENT OF THE UNITED STATES

a. The State Central Committee of the California Democratic Party, Democratic County Central Committees, and all official units of the California Democratic Party shall not endorse any candidate for delegate to the Democratic National Convention and shall not endorse candidates for President of the United States until the Democratic National Convention has been held.

b. Individual members of the organizational units identified in subsection (a) of this section are in no way precluded from endorsing delegates to the Democratic National Convention nor a candidate for the Democratic Presidential nomination. The party office of members making such an endorsement may be indicated in that endorsement for identification purposes only.

Section 2. PARTISAN PUBLIC OFFICES OTHER THAN PRESIDENT

a. Endorsement of candidates for the Democratic nomination to any partisan office other than President shall take place during a duly noticed "endorsing convention" of This Committee held after the closing date for filing declarations-of-intent-of-candidacy for the offices to be voted upon. (See subsection (e) below for an exception to this provision.)

b. This Committee shall make every reasonable effort to assure that with respect to each and every office embraced by the provisions of the subsection (a) above there shall be at least one candidate who has filed, who wishes the party's endorsement, and who is worthy of consideration for that endorsement.

c. Endorsement in any given primary race shall be made by an "endorsing caucus" of members of This Committee resident in the geographic area covered by the office in question and shall be subject to ratification by the full membership of This Committee, except in the case of the Board of Equalization which shall be treated as a state wide office.

(1) Endorsing caucuses shall be chaired by persons designated by the Chair of This Committee. In addition to presiding over the endorsing caucus in conformity with these by-laws and with the principles of fairness to which this Party is committed, persons designated as Chairs shall be responsible – upon the advice and assistance of the State Chair – for publicizing, in the relevant local media of communication, the results of the endorsing and ratifying process with respect to the candidate(s) considered by the caucus he/she chairs.

(2) Endorsing caucuses shall be held at places and times during the endorsing convention which are designated by the Chair of This Committee consistent with achieving an orderly, convenient and fair process.

(3) Each candidate entered in a forthcoming Democratic primary and subject to the provisions of this section may request to be considered for the Democratic Party endorsement, and may request to appear before the relevant endorsing caucus.

(4) Each candidate seeking the endorsement of the California Democratic Party shall submit to This Committee, in advance of the endorsing convention, a nonreimbursable filing fee of $100 in the case of statewide public offices and $50 in all other cases.

(5) Fifty percent plus one of the credentialed members of an endorsing caucus shall constitute a quorum.

(6) Voting at all the endorsing caucuses shall be by a roll call vote.

(7) Members of an endorsing caucus shall be presented with a "No Endorsement" option on all endorsement votes.

(8) No endorsing caucus may endorse more candidates than there are seats for the office in question.

(9) Endorsement of an incumbent candidate seeking re-election shall require a vote of simple majority of the caucus members present and voting. Endorsement of all non-incumbent candidates shall require 60% of those caucus members present and voting. In the event that on a given endorsing vote neither a candidate nor a "No Endorsement" receives the required majority, then a new vote shall be taken wherein the name of any withdrawn candidate or, if none has withdrawn, the name of the candidate with the lowest number of votes on the previous vote shall no longer be put before the members of the endorsing caucus. Before any vote, each candidate shall be given an opportunity to withdraw in favor of some other candidate.

d. Decisions of the endorsing caucus shall be subject to ratification by the full membership of This Committee, except with respect to candidates for statewide public office.

(1) In the case of a statewide public office, This Committee's ratification of the endorsing caucus' decision shall be assumed, since the endorsing caucus is comprised of all members of This Committee.

(2) Ratification of endorsing caucus decisions on which no objection has been filed under the provisions of (3) below may be achieved by a vote of Acclamation which embraces as many such decisions as deemed appropriate by the Chair of This Committee.

(3) Formal objection to the ratification of an endorsing caucus decision must be signed by at least 200 credentialed members of This Committee and filed with the State Chair one hour in advance of the period set aside for ratification votes.

(4) Consideration by This Committee of endorsing caucus decisions to which objection has been filed under (3) above shall occur

prior to voting on the ratification of other caucus decisions and shall include the presentation of arguments for and against ratification.

(5) In the event fifty percent plus one of the members of This Committee present and voting fail to vote to ratify an endorsing caucus decisions to which formal objection has been filed, the endorsing caucus decision shall be considered "vacated."

(6) The California Democratic Party shall be considered to have made "No Endorsement" where a caucus decision has been vacated unless the members of This Committee decide to endorse a substitute candidate.

(a) Substitute candidates may be nominated from the floor immediately following the vacating of the relevant endorsing caucus.

(b) Substitute candidates must have been considered for endorsement by the relevant endorsing caucus.

(c) To become the endorsed candidate of the California Democratic Party a substitute candidate must receive 75% of the vote of the members of This Committee present and voting.

e. In the case of a special election where an endorsement cannot be made at the biennial endorsing convention of the California Democratic Party, the Chair of This Committee shall convene an endorsing caucus of the members of This Committee resident in the relevant district. Such caucus shall proceed in accordance with the relevant procedures provided for in subsection (c) above and its decision shall be subject to ratification by the Executive Board of This Committee under procedures consistent with those identified in subsection (d) above.

f. Only Democratic candidates for nomination to partisan public office who have been endorsed in accordance with the foregoing provisions shall be deemed official candidates of the California

Democratic Party and be entitled to the privileges and benefits associated therewith.

g. To assure the effectiveness of the Democratic Party's endorsing process, This Committee: (1) hopes and expects that all of its members will make every reasonable effort to recruit and encourage persons of the highest quality to seek the Party's nomination and endorsement in races for partisan public office; (2) hopes and expects that all of its members will make every reasonable effort to see that endorsed candidates receive the Party's nomination and, in due course, are victorious in the general election; (3) hopes and expects that all of its members will make every reasonable effort to see that those aspirants for the Party's endorsement who fail to receive that endorsement withdraw as candidates in the Democratic primary and encourage a unified effort on behalf of the endorsed candidates; and (4) intends to protect the integrity of its endorsing power by precluding – including through the use of legal process other entities from representing themselves a purveyors of an official Democratic Party endorsement.

h. To assure the effectiveness of the Democratic Party's endorsing process, This Committee is committed to the principle that the Democratic Party as an organization shall speak with one voice with respect to the endorsement of candidates for the principle that This Committee shall be broadly and fairly representative of the various components of the Party.

(1) The Executive Board of This Committee shall consider and may approve a request for a variance from these provisions submitted by a County Central Committee wishing to render an independent endorsement of a "favorite son" or "favorite daughter" candidate for the Democratic nomination to statewide partisan public office. In the event such a variance is granted, the endorsed candidate shall not be considered, and shall not be presented as the endorsed candidate of the California Democratic Party unless he/she is also endorsed in accordance with the procedures described in the foregoing sections of this Article.

(2) Any official unit or any Democratic County Central Committee of the California Democratic Party which renders an independent, unauthorized endorsement of a candidate for partisan public office shall forfeit its right to representation on This Committee and the privileges and benefits which may be attached thereto for a period of 12 months from the time it renders such an endorsement, or the remainder of the term of the current State Central Committee, whichever is longer.

i. "Pre-endorsing Conferences" shall be held at the regional level prior to the State endorsing convention.

(1) The time and place of each pre-endorsing conference shall be determined by the State Chair in consultation with the Party's Regional Directors.

(2) In the event that any Senate District or Congressional District falls into more than one Region, the State Chair shall assign those districts to a single regional pre-endorsement conference for the purposes of making the recommendation set forth in this section, due consideration being given to conflicting conference dates so as to allow for full participation. When an eligible voter in a Senate or Congressional District does not reside in the designated Region for that office, a written, signed statement from the eligible voter shall be recorded as part of the roll call vote if received by the designated Regional Director prior to the beginning of roll call for the vote in the designated Region.

(3) The State Chair shall be responsible for providing each voting participant with notification of the time and place of the relevant pre-endorsing conference. Regional Directors shall be responsible, upon the advice and assistance of the State Chair, for generally publicizing pre-endorsement conferences.

(4) Each pre-endorsing conference shall be chaired by the relevant Regional Director or, in the event that there is no Regional Director available for this purpose or the Regional Director is a candidate for nomination to a partisan public office, by a person designated by the

State Chair. The State Chair shall designate a Secretary for each Regional pre-endorsing conference.

(5) Voting participants at each pre-endorsing conference shall be:

a. All members of This Committee resident in the district;

b. All regular County Committee members resident in the district;

c. A designated Assembly District representative from chartered clubs and organizations. Each chartered Democratic club or other County Committee chartered organization is entitled to one (1) representative for each Assembly District contained in the club membership. These Assembly District representatives will vote only in the Districts in which they reside. The representative must have been designated as the Assembly District representative by January 24, 1988.

(6) No proxy voting shall be allowed at pre-endorsing conferences. It shall be the responsibility of each Regional Director, with the assistance of the relevant County Committee Chair(s) and Assembly District Committee Chair(s) to identify by name all present who will be eligible voters at his/her regional pre-endorsing conference and to transmit the names of all such voters to the State Chair, along with the Assembly District, Senate District and Congressional District in which each resides 30 days before the pre-endorsing conference.

(7) Each candidate for the Democratic nomination to a partisan, non-statewide public office whose jurisdiction extends into, or is included in a given Region, shall be permitted to address the relevant pre-endorsing conference or to designate a representative to address said conference.

(8) Any voting participant may offer for conference consideration the name of a candidate for the Democratic nomination to a partisan, non-statewide public office whose jurisdiction extends into, or is

included within the given Region, except as provided in Section 2:i:2 above.

(9) Once the names of candidates for a given office have been thus offered, a single roll call vote shall be taken as to the preferences of the eligible voting participants. A "no preference" option shall be available at the time of each vote.

(10) Eligibility to vote with respect to a given office shall be limited to those conference participants resident in the election district in question.

(11) The Chair of the pre-endorsing conference is responsible for transmitting to the State Chair, in writing, the results of all votes taken within three days of the pre-endorsing conference.

(12) A candidate's name may be placed on the consent calendar of This Committee's endorsing convention upon receiving a 70% vote at a pre-endorsing conference. The consent calendar shall be approved by a simple majority vote of This Committee. Upon approval of the consent calendar the candidate shall become the endorsed candidate of the Democratic Party.

A name may be removed from the consent calendar by any five (5) members of This Committee resident in the District in question by filing a letter of objection with the State Chair no later than ten (10) days prior to the State Endorsing Convention. If a name is removed from the consent calendar, the By-laws of This Committee regarding endorsements shall apply.

j. All winners of the Democratic primaries will be deemed to be the endorsed candidates of This Committee, unless 75% of the members of its Executive Board, present and voting, object.

k. The only form of endorsement of a candidate for Partisan Public Office is an "Official Endorsement" as provided for under these by-laws. Unless a candidate has received an "Official Endorsement" all motions of support, recommendation, or other expressions of

approval, no matter how denominated, shall be out of order at any meeting of This Committee, its Executive Board, its Regions, its Assembly District Committees or its caucuses.

1. This Committee shall not endorse candidates for County Central Committee.

Section 3. NONPARTISAN OFFICES

a. Endorsement of candidates for all local nonpartisan offices (defined here as all nonpartisan offices whose jurisdiction does not extend across county lines) shall be the exclusive responsibility of the relevant Democratic County Central Committee.

b. A democratic candidate for nonpartisan office who has been endorsed by his/her County Central Committee shall also be considered to be the endorsed candidate of the California Democratic Party and shall be entitled to such privileges and benefits as may be attached thereto (*e.g.*, an opportunity, where appropriate, to include his/her name in informational material distributed with the California Democratic Party's mailing permit) provided that: (1) The endorsing provisions of the relevant County Central Committee by-laws have been reviewed and approved by This Committee as consistent with its own by-laws and with the fundamental rules of fairness to which the California Democratic Party is committee; and (2) A Democratic candidate who has been denied endorsement does not successfully argue before This Committee that there has been a significant violation of the endorsing provisions of the relevant County Central Committee when it rendered its endorsement. Any claim of by-laws violation must be filed with the State Party Chair within five (5) days of County Committee endorsement. Any claim of by-laws violation must be filed with the State Party Chair within five (5) days of County Committee endorsement. A 2/3 vote shall be necessary to uphold the violation claim.

c. In order for the endorsement of the County Central Committees to become the official endorsements of the California Central Committee, the following must be met:

(1) A Democratic County Central Committee endorsement shall be extended only to registered Democrats.

(2) Endorsement shall not be given to more candidates than there are seats open for the office in question.

(3) All endorsements shall be made in accordance with the Committee By-laws provisions duly adopted at least six months prior to making such an endorsement.

d. A County Central Committee's by-laws may provide that the Committee shall not endorse candidates for any or all offices embraced by subsection (a) above, and/or may provide for a "No Endorsement" decision with respect to any or all such offices.

e. A County Central Committee's by-laws may provide that voting rights with respect to its endorsements shall extend to Associate Members and/or to all members of This Committee resident in the county.

f. This Committee shall be responsible for endorsing candidates in any race for nonpartisan office not identified in subsection (a) above. In the case of nonpartisan offices which are not statewide but embrace all or part of two or more counties, This Committee shall delegate its endorsing power to a specially organized body including Democratic County Central Committee members resident in the election district. It shall be the responsibility of the State Chair, in consultation with the relevant County Committee Chairs to determine the manner in which that delegated power is to be implemented (*e.g.*, to determine the voting rights of Associate members of the relevant County Committees, whether and how endorsing votes may be weighted to take into account the distribution of the district population among the affected counties, etc.

g. To the extent permissible, the position of a Democratic County Central Committee on a local proposition being put before the voters within its jurisdiction may be communicated in informational material distributed with the California Democratic Party's mailing permit so long as the following conditions obtain:

(1) the County Committee position has been duly adopted in accordance with Committee by-laws reviewed and approved by This Committee;

(2) the material does not express the endorsement of a candidate for local nonpartisan office who is not also an endorsed candidate of the California Democratic Party under subsection (b) above;

h. The County Committee position shall be the position of This Committee unless an objection is filed with the State party Chair which: (a) is signed by at least one-half of the members of This Committee resident in the relevant county, and (b) is submitted within five days of the adoption of the County Central Committee position.

i. The provisions of this section (with the exception of subsection (e) above [)] shall become effective if and when Party endorsements in nonpartisan races become legally permissible.

j. This Committee hopes and expects that every County Central Committee shall make every reasonable effort:

(1) to see that at least one qualified, registered Democrat is a candidate for each local nonpartisan office within its endorsing jurisdiction;

(2) to raise funds sufficient to provide significant support to endorsed candidates needing and wishing support;

(3) to persuade Democrats running against endorsed candidates to withdraw from their races and to extend their support to those carrying the endorsement;

(4) to protect the integrity of its endorsement power by precluding – including through the use of legal processes – other entries from representing themselves as purveyors of an official Democratic Party endorsement.

No. 87-1269 (5)

SUPREME COURT, U.S.
FILED
JUL 1 1988
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1987

MARCH FONG EU, Secretary of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; LEO HIMMELSBACH, District Attorney of Santa Clara County,

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLIAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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JURISDICTIONAL STATEMENT FILED JANUARY 27, 1988
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* The appendix to the jurisdictional statement is in two volumes, the first of which is bound with the jurisdictional statement. The two volumes are referenced "J.S. App. I" and "J.S. App. II." The addendum to the motion to affirm or dismiss is referenced as "M.A.D. Add."

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DOCKET ENTRIES IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT*

MARCH FONG EU, Secretary of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; LEO HIMMELSBACH, District Attorney of Santa Clara County,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVIE E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL,

No. 84-1851

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* This Joint Appendix sets forth the Docket Entries in the courts below and other parts of the record. Both the docket entries and the other parts of the record are set forth exactly as they appear in the official record of this case below. No attempt has been made to correct typographical or grammatical errors that actually appear therein.

84-1851

Date	Filings-Proceedings
1984	
April 16	DOCKETED CAUSE & ENTERED APPEARANCES OF COUNSEL. lw Clerk's Fee $65
April 16	Filed aplt's emergency motion for stay on appeal w/appendix in eight volumes CIVATT (4/16) lw
Apr 18	Filed appellees' memorandum in opposition to aplts' emergency motion for stay with supporting declaration. (CIVATT) 4/18 ogm
Apr 24	Filed Order (WRIGHT, SKOPIL & NORRIS, CJJ) aplt's emerg. mot. for stay on appeal is granted and the judgment is stayed until further order of this court. The appeal is expedited. Oral argument on the merits will be heard at 1:30 p.m. on Tuesday, May 15, 1984 in San Francisco. Any supplemental briefs will be filed with the clerk by Tuesday, May 08, 1984. -ot-
May 8	Filed aplt's Civil Docketing Statement. 5/7 (CONFATT) eal
May 8	Filed aplt's mot. for additional time for oral argument. (5/8) (Panel) tsp
May 8	Filed Orig & 15 aplt's supplemental brief (49 pgs); 5 appendices (5/8) (Panel) tsp
May 8	Filed Orig. & 15 aple's supplemental brief (49 pgs) (5/8) (Panel) tsp
May 10	Filed delcaration of Geoffrey L. Graybill, counsel for aplts, concerning aplts' supplemental memorandum. (Panel) 5/9 eal
May 11	Filed Order (WRIGHT) aplts' motion to have one hour for oral argument is denied. The parties shall have 30 minutes each to argue. ogm

May 15	Argued and Submitted to: WRIGHT, SKOPIL, NORRIS, CJJ. pf
May 23	FILED AS OF 5/18/84 CERTIFICATE OF RECORD. (5/3/84) lw
May 25	Filed Order (WRIGHT, SKOPIL, NORRIS) This appeal was argued and submitted 5/15/84. Among the issues raised, aplts challenged the delcarations of the central committee aples, who asserted they were authorized to bring this action. In support of this challenge, aplts sought discovery of committee bylaws and minutes, which were not provided by aples. The D.C. neglected to rule on this callenge. We remand to that court to make findings of fact and conclusions of law with respect to the authority of aples to bring the action and appeal. lw
June 5	Filed aples' notice of district court order following remand. (6/5) (Panel) tsp
June 18	Filed Order (WRIGHT, SKOPIL and NORRIS, CJJ) The aplts may, if they desire, file supplemental briefs with this court concerning the authority of the aples to bring this action and appeal. If they brief this issue, such briefs shall be filed within 10 days of the date of this order. Aples will then have 10 days to file a responsive brief. All briefs shall be limited to discussion of this issue and no brief shall exceed 10 pgs in length. eal
June 29	Received Orig & 15 Appellants' Supplemental Brief per court order of 6/18, (11 pgs) 6/28 (Oversized; counsel advised to send motion for leave to file oversized brief) PANEL EM
June 29	Filed Aplt's motion for leave to file appendix to Supplemental Brief 6/28 PANEL EM
June 29	Received Orig. & 5 Aplts Appendix to Supplemental Brief. PANEL EM

June 29 Filed Aplt's motion for leave to file a reply brief. 6/28 PANEL EM

June 29 FILED AS OF 5/18/84, CERT. TRANSC. OF RECORD ON APPEAL IN SEVEN VOLUMES: VOLS. I-IV PLDGS (Orig); VOLS. V-VII R/T's (Orig). EM

July 3 Filed aplt's mot. for leave to file oversized brief. (6/29) (Panel) tsp

July 9 Filed aple's response to aplt's mot. for leave to file oversized brief. (7/9) (Panel) tsp

July 9 Filed aple's memorandum regarding authorization of litigation. (7/9) (Panel) tsp

July 22 Filed Order (NORRIS) Aplts' motion for leave to file an oversized suppl' brief of 11 pgs is granted. The brief, recv'd by the Clk on June 29, 1984, shall be filed. Aplts' motion for leave to file an appendix to their suppl' brief is granted. The appendix, recv'd by the Clk on June 29, 1984 shall be filed. eal

July 23 Filed Orig & 15 aplts' suppl' brief previously recv'd, eal

July 23 Filed Orig & 15 aplts appendix to suppl' brief previously recv'd. eal

Aug. 1 Filed Order (WRIGHT, SKOPIL and NORRIS, CJJ) Aplt's mot. for leave to file a reply brief is granted subject to the following conditions. First, the reply brief must be no longer than 10 pgs in length. Second, the subject of the reply brief shall be limited to the question whether the Committee Pltfs were authorized to bring this suit. Thrid, the brief shall be filed no later than 10 days after the date of this order. eal (8/1)

Aug. 13 Filed Orig & 15 Deft-Aplts' reply brief per Court Order of 8/1/84. (10 pgs + Exh); 8/11. PANEL EM

Aug. 22 Filed Orig & 15, motion by Thomas Spinosa & Stanley Adamson to file amicus Curiae brief. [Included in the motion on the same volume are: application for leave for later filing; application to participate in oral argument; and proposed amicus curiae brief. With the motion, is separate volume—Exhibit A in support of application for leave for later filing—in 4 copies) 8/21 [PANEL] EM

Aug. 29 Filed Pltf-Aple's Motion For Leave to file appendix to Pltf's memorandum regarding authorization of litigation and to brief of Plaintiffs-Appellees. 8/29 PANEL EM

Aug. 29 Recvd Orig & 31 Pltfs-Aples' Appendix to Plaintiffs' Memorandum Regarding authorization of Litigation and to Brief of Plaintiffs/Appellees. (21 pgs) 8/29 PANEL EM

Sept. 10 Filed Aplts.' Opposition to Plaintiffs' Motion for leave to file appendix. 9/7/84 PANEL EM

Sept. 13 Filed Order (NORRIS) The mot. for leave to file Amicus Curiae Brief is granted. (9/13) tsp

Sept. 13 Filed Order (NORRIS) Aple's mot. for leave to file appendix to aple's memorandum regarding Authorization of Litigation and to brief of aples is granted. (9/13) tsp

Sept. 13 Filed Orig & 3 aple's appendix to apls' memorandum regarding authorization of Litigation and to brief of aples. tsp

Oct. 1 R'cvd letter from atty. for amicus curiae, objection to consideration of Appendix to Plaintiff's Memorandum Regarding Authorization of Litigation and to Brief of Pltf/Appellees, on the grounds that it is irrelevant, inadmissible, adhominem and partially false. (Panel) 9/28 ogm

Oct. 16 Filed as of 10/15, Notice of action by appellee (S.F. County Republican Central Committee re-

garding authorization of lawsuit; Declaration of Robert R. Bacci & Supplemental declaration of Dolph Andrews regarding authorization of lawsuit; Declaration of Robert R. Bacci & Supplemental declaration of Dolph Andrews regarding authorization of lawsuit by S.F. County Republican Central Committee. (Panel) 10/15 ogm

1985

Jan. 18 Recvd letter dtd Jan. 17 from aple re: decision by Calif. Supreme court and of intention to join the calif. decocratice State Central Committee as Plaintiff in remaining portions of third cause of action. (Panel) tsp

Aug. 5 Filed Order (Wright, Skopil, Norris): Because of the difficult issues presented by this case, we order the parties to file supplemental briefs directed to the following issues: (1) Are the state and county central committees private associations entitled to the full protections of the First and Fourteenth Amendments of the U.S. Constitution? (2) Is California's regulation of the composition of state central committees and the term of committee chairpersons in violation of the First and Fourteenth Amendments? (3) If the Court affirms the district court's invalidation of the statutes challenged in the third cause of action, should the court consider the additional remedies to assure the orderly transition from a regulated to an unregulated system of selection? Appellants should file their brief within 20 days of the date on which this order is filed. Appellees shall file a responsive brief within 15 days thereafter. The briefs shall be no longer than 30 pages in length. This case is ordered vacaged from submission. The case will be resubmitted when both briefs are filed without further order from this court. EM

Aug. 14 Filed aplts' motion for ext. of time to file supplemental brief with a declaration of Goeffrey L. Graybill in support of motion. 08/13 (Panel) -et- (cmk)

Aug. 15 Filed aples' response to aplts' motion for ext. of time to file supplemental brief. 08/15 -ot- (cmk)

Aug. 26 Filed Order (WRIGHT, KOPIL & NORRIS) Appellants' motion for extension of time to file supplemental brief to and including September 23, 1985 is granted. Appellees shall file a responsive brief within fifteen (15) days thereafter. The briefs shall be no longer than thirty (30) pages in length. (8/26) cmk

Sept. 12 Filed as of 9/11, Appellees' motion for ext of time to file a responsive brief to & including Nov. 5, 1985. (PANEL) 9/11 ogm

Sept. 20 Filed Aplts' motion for further ext of time to file the supplemental brief. (Panel) 9/19 ogm

Sept. 23 Filed Order (NORRIS) Appellees' time for filing their responses to supplemental brief is extended to October 23, 1985. (9/23) cmk

Oct. 1 Filed Order (WRIGHT, SKOPIL & NORRIS) Appellants' motion for extension of time to file supplemental briefs to and including October 7, 1985 is granted. Appellees shall file a responsive brief within twenty-eight (28) days after filing of appellants' supplemental briefs. The briefs shall be no longer than thirty (30) pages in length. No further extensions will be granted. (10/1)

Oct. 9 Filed as of 10/7, Orig. & 3 Aplts' Supple Briefs. (22 pgs, excluding the addendum) 10/5 (Panel) ogm

Oct. 21 Filed aplt's mot. for leave to file reply brief. (10/21) (Panel) tsp

Oct. 25	Filed aplt's declaration of Geoffrey L. Graybill in support of mot. for leave to file reply brief. (10/24) (Panel) tsp
Oct. 28	Filed Appellees' memorandum in opposition to appellants' second motion for leave to file reply brief. (10/28) (Panel) dmd
Oct. 28	Filed declaration Cedric C. Chao in opposition to appellants' second motion for leave to file reply brief. (10/28) (Panel) dmd
Nov. 5	Filed aples' Supplemental Brief pursuant to Court order of 8/5/85. (27 pgs) 11/4 PANEL EM
Nov. 5	Filed aples' motion for leave to file declarations in response to third question posed on 8/5/85 order, w/ the declarations attached. 11/4 PANEL EM
Nov. 8	Filed order (NORRIS) the mtn by aplts March Fon Eu, et al for leave to file a reply brief is granted. The brief shall be filed no later than 10 days from the entry of this order and shall not exceed 15 pgs. -db
Nov. 18	Filed Orig & 3 Aplt's Supplemental Reply Brief pursuant to Court order of 8/5/85 & 11/8/85 (11/17) PANEL EM
Nov. 27	Filed Order (WRIGHT, SKOPIL & NORRIS) All supplemental briefs and reply briefs having been received, this case is resubmitted. -ot-
Nov. 29	Filed order (WRIGHT, SKOPIL & NORRIS) All supplemental briefs and reply briefs having been received, this case is resubmitted. -vt-
Nov. 29	CASE RESUBMITTED TO WRIGHT, SKOPIL & NORRIS. -vt
1986	
Jun 18	ORDERED OPINION (NORRIS) FILED & JUDG. TO BE FILED & ENTD.

Jun 18	FILED OPINION—AFFIRMED.
Jun 18	FILED AND ENTERED JUDGMENT. -ot-
Jul 3	Filed aplts' mtn to stay mandate (NORRIS) 7/2/86 -db-
Jul 14	Filed aples' opposition to motion for stay of mandate. 07/14 (NORRIS) -ot-
Jul 16	Filed order (NORRIS) upon due consideration of aplts' mot. for stay of the mandate of this court in the above cause pending the filing of a petition for writ of cert., such petition to be filed within 30 days of this order, it is ordered that the mot. for stay of mandate is granted. tsp
Aug. 06	Rec'd letter dated 08/01, from aple atty Chao not being mention in the advance sheets. -ot-
Aug. 08	Filed aplts' motion for continuance of stay of mandate. 08/07 (NORRIS) -ot-
Aug. 14	Filed Order (NORRIS) it is ordered that the mot. for continuance be granted. tsp
Aug. 14	Filed aplts' notice of appeal to the SC. 08/13 -ot-
Sep. 22	Filed cert. copy of SC order certifing that a petition for writ of certiorari has been filed on Sep. 15, 1986. #86-0434 -ot-
Dec. 5	Copy of SC order certifing that a petition for writ of certiorari has been filed sent to Judge Norris. -dg-
1987	
Jan. 15	Rec'd letter dated 01/12/87, from Spaniol, Jr. Clerk of the SC re-order entered vacating and remanding back to the Ninth Cir. for further consideration in light of Tashjian v. Republican Party of Conn., 479 U.S.—(1986) (Panel) -ot-
Feb. 18	Filed cert. copy of SC Order of 1/12/87, re: vacating judgment of the above court with costs,

and remanding to the US Court of Appeals for further consideration in the light of Tashjian v. Republican Party of Connecticut. (PANEL) EM

Feb. 19 Filed Order (WRIGHT, SKOPIL, NORRIS, CJJ) the parties are directed to submit supplemental briefs of no more than 15 pgs responding to the Supreme Court's remand of this case for further consideration in light of Tashijian v. Republican Party. Eu v. S.F. Co., Democratic Central Committee. The supplemntal briefs shall be filed within 21 days after the filing of this order. tsp

Mar 11 Filed as of 3/10, aplts' motion for extn of time to file supplemental brief on remand. 3/9 PANEL EM

Mar 12 Filed aples' Orig. & 15 copies of supplemental briefs (13 pgs). 03/12 (Panel) -ot-

Mar 12 Filed aples' response to aplt's motion for ext. of time to file supplemental brief on remand. (Panel) 03/12 -ot-

Mar 19 Filed Order (NORRIS) aplts' deadline for submitting their supplemental brief is hereby ext to 3/27/87. Aples can submit a reply brief of no more than 5 ps on or before 4/6/87. tsp

Mar 30 Filed Original and 15 copies of Aplt's Supplemental Brief. (15 pgs) 3/27 PANEL cmk

Apr 6 Filed Original and 15 copies of Aple's Supplemental Brief. 5 pgs 4/6 PANEL cmk

Aug 18 ORDERED OPINION (NORRIS) FILED & JUDG. TO BE FILED & ENTD.

Aug 18 FILED OPINION—AFFIRMED.

Aug 18 FILED AND ENTERED JUDGMENT. -ot-

Aug 31 Filed aplts' motion for ext of time to file petition for rehearing to Sep. 15, 1987. 08/28 (Panel). -ot-

Sept 8 Filed order (NORRIS) Aplts' motion for an ext of time to and including Sept. 15, 1987 within which to file a petition for rehearing and suggestion for rehearing en banc, is hereby GRANTED. This Corut's mandate is also stayed until Spet. 15, 1987.

Sept 8 Recvd aplt's motion for stay of mandate (in the event motion for extn of time to file petition for rehearing en banc is denied) 9/4 (PREMATURED; SEE ORDER OF 9/8) (returned to counsel) SEE FOURTH SHEET 9/24 served panel copies of this motion.

Sept 15 Filed aples' opposition to motion for stay of mandate. 09/15 (Panel) -ot-

Sept 15 Filed aplts' petition for rehearing & suggestion for rehearing en banc. 09/15 (Panel & Active Judges) -ot-

Sept 17 Filed aplts' notice of errata re: petition for rehearing & suggestion for rehearing en banc. 09/16 (Panel & Active Judges) -ot-

Sept 18 Filed declaration of Peter D. Kelly in opposition to aplts' motion for stay of mandate. 09/15 (Panel) -ot-

Oct 29 Filed Order (WRIGHT, SKOPIL & NORRIS) The Court's opinion filed on Aug 18, 1987, is hereby amended as follows: SEE CASE FILE. The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected. -ot-

Nov 05 Filed aplts' motion for stay of mandate to Jan. 27, 1988. 11/04 (NORRIS) -ot-

Nov 17 Filed order (NORRIS) IT IS ORDERED that the motion for stay of mandate be, and the same is hereby denied. -vt-

Nov 17	Filed as of 11/16, aples' opposition to aplts' renewed motion for stay of mandate. (null—see court order of 11/17/87) 11/16 -ot-
Nov 19	Filed aplts' notice of appeal to the SC. 11/18 -ot-
Nov 25	Mandate issued.
1988	
Jan 06	Filed aplts (Aty. Gen of St. of CA & Smith D.A. of S.F.) notice of appeal to the Supreme Court of the U.S. 01/05 -ot-
Jan 14	Filed aplts (Atty Gen of St. of CA) amended notice of appeal to the S.C. 01/13 -ot-
Feb 8	Rec'd as of 2/5, SC notice of filing petition for certiorari on 1/27/88. (SC# 87-1269) cmk
Apr 22	Filed cert. copy of SC order of April 18, 1988, re: "The statement of jurisdiction in this cause having been submitted and considered by the Court, in this case probable jurisdiction is noted. (PANEL) cmk

DOCKET ENTRIES IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARCH FONG EU, Secretary of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; LEO HIMMELSBACH, District Attorney of Santa Clara County,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVIE E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL,

D.C. #C-83-5599 MHP

Date	NR.	APPEAL PROCEEDINGS
1983		
Nov 17	1	COMPLAINT: Summons Issued.
	2	Issued—Order Setting Conference, 2/27/84, 9:30 a.m.—Clerk.
Dec 5	3	Plaintiff's Proof of Service on All Defendants of #1 and #2 and Notice of Right to

Disposition by Magistrate, by mail. See documents for list of those served and on what dates.

4 —FIRST AMENDED COMPLAINT

Dec 6 5 Plaintiffs' Amended Proof of Service of First Amended Complaint: upon defendants, by mail, on 12/6/83.

Dec 16 6 Defendants Eu, Van de Kamp, Smith, Himmelsbach and Shelley's ANSWER TO FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF.

7 Defendant O'Malley's ANSWER BY WAY OF DISCLAIMER.

8 Defendant John Meehan's ANSWER BY WAY OF DISCLAIMER.

Dec 20 9 Plaintiffs' First Set of Interrogatories and Requests for Admission to Defendant March Fong Eu.

10 First Set of Interrogatories and Requests for Admission to Defendant John Van de Kamp.

11 Defendants Philibosian Co. of L.A.'s ANSWER TO FIRST AMENDED COMPLAINT.

Dec 27 12 Defendant Nail's ANSWER BY WAY OF DISCLAIMER.

1984

Jan 12 13 Stipulation that Defendants may have through 1/30/84 to respond to Plaintiffs' First sets of Interrogatories and Requests for Admissions.

31 14 Defendants Van de Kamp, Smith, Himmelsbach & Shelley's Responses to Plaintiffs' First Set of Interrogatories and Requests for Admissions.

15 Defendant March Fong Eu's Responses to Plaintiffs' First Set of Interrogatories and Requests for Admissions.

Feb 17 16 William O'Malley's Status Certificate of Defendant's O'Malley Meehan and Nail: 2/27/84 at 9:30a.m.

17 Plaintiffs' Status Certificate for Conference: 2/27/84 at 9:30am.

21 18 Defendants' Status Conference Certificate.

27 19 MINUTES: (c/r JoAnne Farrell, Status held, Case continued to 4/2/84 10:30am for plaintiff's motion for summary judgment, Plaintiff's request to file brief in excess of 25 pages granted.

Mar 2 20 ORDER: that defendants O'Malley, Meehan and Nail are dismissed MHP.

5 RECEIVED: Proposed order re plaintiffs summary judgment motion.

21 Plaintiffs declaration of MaryKing in support of motion for summary judgment.

1984

Mar 5 22 Plaintiff declaration—James Fay in support of motion for summary judgment.

23 — —Donald Fraser —

24 — —Mary Gingell —

25 — —Miller Hudson —

26 — notice of motion and motion for summary judgment set 4-2-84/10:

27 — memo in support —

28 — declaration—Dolph Andrews —

29 — — —Hugh Bone —

30 — — —Carolyn Wallace —

31 — — —Nancy Walker —
32 — — —Mary Vail
33 — — —David E. Sturrock —
34 — — —Catherine C. Rockwood —
35 — — —Thomas Romero —
36 — — —Austin Ranney —
37 — — —Linda Post —
38 — — —Karen Marchioro —
39 — — —James MacGregor Burns —
40 — — —Bert Coffey —
41 — — —Walter W. Layson —
42 — — —Eugene Lee —
43 — — —Robert Mack —
44 — — —Malcolm E. Jewell —
45 — — —Paul R. Dieseth —
46 — — —Edmond Costantini —

1984

Mar 5 47 Plaintiffs declaration of Roy Christman in support of motion for summary judgment. —Exhibits

6 RECEIVED: proposed order.

48 Defendants' Notice of Motion and Motion to Dismiss set on 4-2-84 at 10:30 am.

49 — Memo in support of # 48.

8 50 Declaration of Roy Christman in Support of Summary Judgment set for 4-2-84 @ 10:30 am.

51 Notice of Order Re: Disclaiming Defendants as to parties delivered on 3-7-84.

16 52 ORDER: that Defendant's opposition to Plaintiffs' motion for summary judgment may be filed by 3-26-84; that Plaintiffs' reply to Defendants' opposition may be filed by 4-2-84; that hearing on Plaintiffs' motion for summary judgment and Defendants' motion to dismiss shall be held on 4-9-84 @ 10:30 am unless Court sets another date filed no earlier than 4-6-84; that after hearing Defendants' may seek leave to introduce evidence into the record not earlier available MHP.

ENTERED 3-16-84 Clerk.

20 RECEIVED: Letter to James Brosnahan dated 3-19-84 from Graybill Deputy Atty. General.

26 RECEIVED: Proposed Order Re: Motion to Dismiss.

53 Plaintiffs' Memo in Opposition to Defendants' Motion to Dismiss.

54 —Declaration of Paul R. Dieseth in Opposition to Defendants' Motion to Dismiss set 4-9-84—10:30 am.

29 RECEIVED: Proposed Order Re: Summary Judgment.

55 Defendants' Notice of Motion and Motion for Summary Judgment set 4-9-84 @ 10:30 am.

56 —Memo in Opposition to # 55 and in support of Defendants' Motions to Dismiss and for Summary Judgment.

57 —Declarations Re: # 56.

1984

Apr 2 58 Plaintiffs' Reply memo in support of Plaintiffs' Motion for Summary Judgment.

59 —Supplemental Declaration of Mary Vail Re: Summary Judgment.

60 — — —of James MacGregor Burns Re: Summary Judgment.

61 — — —of Edmond Costantini Re: — —

62 — — —of Linda Post Re: — —

63 Defendants' Reply to Plaintiffs' Opposition to Motion to Dismiss.

3 64 —Declaration of John J. Meehan in support of Defendant's Motion to Dismiss and for Summary Judgment.

65 — —Leo Himmelsbach Re: #64

66 — —Michael E. Nail Re: #64

67 — —William O'Malley Re: #64

68 — —Jack E. Shelley Re: #64

6 69 Plaintiff's Declaration of Dolph Andrews Re: Authorization of Lawsuit:

70 — Mary Gingell — —

71 — Robert Mack — —

72 — Linda Post — —

73 — Catherine C. Rockwood — —

74 — Carolyn Wallace — —

75 Defendant March Fong Eu's Declaration of Robert Podesta in support of Defendants' motion to Dismiss and for Summary Judgment.

9 76 Plaintiff's Supplemental Declaration of Walter W. Layson in support of Plaintiff's motion for Summary Judgment.

77 —List of cases from USSC and ninth circuit since 1970 concerning first amendment speech and association rights and applying compelling state interest analysis.

1984

Apr 10 78 MINUTES (c/r Paul Schiller) Plaintiff's Motion for Summary Judgment Defendant Eu and Philibosian's Motion to Dismiss—Court gave its tentative ruling on both; Order to be prepared today by plaintiff a memorandum will follow MHP.

79 Plaintiff's Proof of Service on #'s 76 & 77.

Apr 12 80 Defendant Robert Philibosian's Declaration in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Defendant's motion to Dismiss and for Summary Judgment.

13 81 REPORTER'S TRANSCRIPTS of 4-9-84 C/R Paul Schiller.

16 82 REPORTER'S TRANSCRIPTS of 2-27-84 C/R Joanne M. Farrell.

83 ORDER: that plaintiffs' motion for Summary Judgment as to the first cause of action is GRANTED in its entirety—that as to the second cause of action all proceedings are hereby STAYED until the California Supreme Court issues an order; that plaintiffs' motion for Summary Judgment as to the third cause is GRANTED IN PART—see order for details—, that Defendants' motions to Dismiss as to first and third causes for summary judgment are DENIED; that the Clerk enters this forthwith as final judgment for Plaintiffs' as to the first and third causes insofar as Summary Judgment is granted; that Defendants' motion to stay this

order is hereby DENIED MHP ENTERED 4-16-84 Clerk.

84 JUDGMENT: that Plaintiffs' motion for Summary Judgment as to the first cause of action is GRANTED; and that Plaintiff's motion for Summary Judgment as to the third cause is GRANTED IN PART; that Defendants' motion to Dismiss and/or for Summary Judgment as to the first and third causes of action is DENIED MHP. ENTERED 4-16-84 Clerk.

85 Defendants' Notice of Appeal USCA #84-1851.

18 86 —Declaration of Personal Service of # 85.

—Docket Fee Payment Notification Form mailed to USCA.

Apr 12 87 MINUTES: (c/r Eric Wik) Phone Conference—Extension of time to file opposition to Summary Judgment motion GRANTED; Defendant's response due 3-26-84, Plaintiff's Reply 4-2-84; Hearing set for 4-2-84, continued to 4-9-84 @ 10:30 MHP

1984

Apr 19 88 Plaintiffs' Declaration of Mary King Re: Authorization of Lawsuit.

89 — — Thomas Romero — —

23 90 Appellants' Designation of Reporter's Transcripts of 2-27-84, 3-12-84 and 4-9-84.

26 RECEIVED: Letter to Clerk from Defendant's Counsel Re: 9th Circuit Order Granting Emergency Stay.

91 Letter to Clerk from Defendant's Counsel dated 4-25-84 Re: 9th Circuit's Order Granting Emergency Stay.

May 3 92 ORDER: Defendants' Motion for Summary Judgment is DENIED (see Order) ENTERED 5-3-84 Clerk. MHP

93 REPORTER'S TRANSCRIPTS 3-12-84 c/r Eric Wik.

RECEIVED: Letter to Clerk from Graybill dated 5-4-84 Re: Proposed Order dated 4-10-84.

8 94 Appellant's Designation of Clerk's Record on Appeal.

95 —Declaration of Personal Service of # 95.

11 96 Letter to clerk from Defendant's Counsel dated 5-4-84 Re: Copy of Proposed Order submitted to Court 4-10-84 for Summary Judgment.

16 —mailed Certificate of Record to USCA and Counsel.

17 97 ORDER: that at Footnote 1, delete "Santa Clara" and Substitute "Contra Costa" MHP

21 98 Appellee's Designation of Clerk's Record on Appeal.

Jun 1 100 USCA ORDER: District Court to make findings of fact & Conclusions of law with respect to the authority of appellees to bring the action appeal.

101 Plaintiffs' further Submission Re: Authorization of Lawsuit.

102 —Declaration of Cedric C. Chao Re: Further Submission of Authorization Materials.

1984

Jun 1 103 ORDER: Court finds that Plaintiff central committees & each of them have authorization

and capacity to bring and maintain litigation; and the Court will not intrude as to whether appellees have authority to bring an appeal, the appellate court is to make that determination MHP.

19 108 Plaintiffs' 3rd Submission Re: Authorization of Lawsuit.

109 —Declaration of Cedric C. Chao Re: 3rd Submission of Authorization Materials.

21 110 RECEIVED: Proposed Supplemental Order following Remand.

22 Record on Appeal mailed to USCA.

Jul 2 111 Receipt from USCA for Record on Appeal.

11 112 Defendants Thomas Spinosa & W. Stanley Adamson's Notice of Motion to be joined and to Intervene & set aside Summary Judgment 8-27-84/10:30.

113 —Points and Authorities in support of # 112.

114 —Supporting Declaration of Thomas Spinosa.

115 —Proof of Service by Mail on 112-114 & Proposed Order & Answer.

Aug 13 RECEIVED: (proposed) Order Re: Motions to Intervene & Summary Judgment.

RECEIVED: Motion & Order for leave to file oversized brief.

116 Plaintiff's Memo in Opposition to Motion of Spinosa & Adamson to Intervene, to join and set aside final Judgment.

1984

Aug 13 117 Plaintiffs' Exhibits to Opposition to Motions of Spinosa & Adamson to Intervene, Join & set aside Final Judgment.

118 —Declaration of Cedric C. Chao in support of Motion to file brief.

119 —Further Declaration of Mary Gingell Re: Authorization of Lawsuit.

120 — — — Thomas Romero Re: — —

121 — — — Mary King Re: — —

14 122 Plaintiff's Table of Authorities to Memo in Opposition to Motion of Spinosa & Adamson to Intervene 8-2-84 @ 10:30 a.m.

123 —Corrected Exhibits to Opposition to Motions of Spinosa and Adamson Re: Intervention.

15 124 Defendants' response to Motions to be Joined, Intervene or set aside.

20 125 Movants Spinosa & Adamsons' response brief.

126 —supporting declaration of Thomas Spinosa.

127 —Declaration of Stanley Adamson.

24 128 Plaintiffs' Supplemental Memo in Opposition to Spinosa's Motions set 8-27-84 @ 10:00 a.m.

129 —Declaration of Arlo Hale Smith, Jr.

130 Movants' Motion to Strike & Objection to Admisability of "Faulkner Press Release" & Conditional Offer of Proof.

131 MINUTES: (c/r D. Davenport) Motion to be joined to Intervene & set aside Summary Judgment by Spinosa & Adamson 1st & 3rd DENIED, 2nd DENIED without prejudice. MHP.

31 132 ORDER: any Motion to Intervene in 2nd cause of action is DENIED without prejudice (see order) MHP.

1984

Sep 27 137 REPORTER'S TRANSCRIPTS of 8-27-84 c/r D. Davenport.

1985

Jan 16 138 Plaintiff's notice of decision by Calif. Supreme Court, etc.

139 —declaration of Peter D. Kelly.

1986

Nov 20 144 USCA memorandum returning record on appeal.

Dec 1 148 Copy of Judgment from USCA that decision of USDC is affirmed.

2 149 Clerks letter to counsel of record re Mandate.

1988

May 13 Sent file per clerk to USCA.

19 150 Acknowledgment letter returned from USCA.

25 Reporters' Transcript (# 81, 82 & 93) mailed per request of clerk to USCA.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Marilyn Hall Patel, Judge

THE SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, ET. AL., Plaintiffs,	)	
vs.	)	No. C 83 5599 MHP
MARCH FONG EU, ET. AL., Defendants.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
February 27, 1984

Reported By:
Joanne M. Farrell, CSR

APPEARANCES

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March Fong Eu, et. al.:
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Assistant County Counsel
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PROCEEDINGS

(p. 2) The Clerk: Civil Action 83-5599, San Francisco County Democratic Central Committee et. al. versus March Fong Eu, et. al. for status. Counsel, your appearances, please.

Mr. Chao: Cedric Chao for the plaintiff.

Mr. Graybill: Geoffrey Greybill for the state defendants and the district attorneys.

Mr. Hickock: Phillip H. Hickock, deputy for Los Angeles County District Attorney.

Mr. Walenta: Arthur Walenta, Assistant County Counsel, appearing for the disclaiming district attorneys, O'Malley, Main & Nale.

The Court: Thank you, As I read your papers, you intend to file a motion for summary judgment.

Mr. Chao: We do, Your Honor. We intend to file next week, and with the court's indulgence, we'd like to set a date at the earliest possible time, and we would suggest April 4 through April 6, with the court's indulgence, and if that's convenient with counsel.

The Court: Do you intend to file cross-motion for summary judgment or a motion to dismiss, or how are you going to handle yours?

Mr. Graybill: Your Honor, we feel there are some very significant jurisdictional issues here with respect to all sets of plaintiffs, which we believe ought to be resolved (p. 3) at the outset. And there may be a limited amount of discovery that we need with respect to those jurisdictional issues. We are dealing here with some County Central Committees. We are dealing with some individual members of those County Central Committees, some politically active persons and two associations that are involved in attempting to change the law by one means or another with respect to strengthening the political parties in the state.

We think there are jurisdictional problems with respect to each of those categories, and—

The Court: Are you referring to standing, essentially?

Mr. Graybill: We are referring to standing, case and controversy, standing under the Civil Rights Acts that have been cited, and those can be very complex issues in themselves. There's a lot of law in the area, and we

would ask the court to allow us to file our papers for dismissal on jurisdictional grounds by the end of April. The schedule—

The Court: He's going to beat you with filing, though, on a summary judgment motion. Can you get your papers filed earlier than that?

Mr. Hickock: Your Honor, perhaps I'm the one who's requesting the delayed date. As the court's probably well aware, this is an election year. We have the primaries scheduled for June 15. Los Angeles County is in the process right now for preparing all the elections materials. My (p. 4) primary assignment is to monitor and take care of any legal problems which arise regarding that. April 9 is the last date for condidates to file nomination papers. Historically we have always had a rash of judicial challenges before and after that date.

Mr. Chao: Perhaps, Your Honor, that points out exactly the reason why I think we should move ahead. If upon review of the complaint it's clear that many of the plaintiffs would like the opportunity to endorse in the June, 1984 elections, and if they were to have that opportunity to do so, then they would start to gear up in about early, mid-April, and that is one of the reasons why we believe it would be appropriate to set this on for summary judgment at an early date. We are going to raise some issues about the case in controversy.

I read the answer filed by the secretary of state and the attorney general. I did not read that answer to say that they, at that time, contested case in controversy. In fact, I read their answer to admit there was a case in controversy.

You know, they have their right to file motions. However, we believe that this should be put on for hearings, with the court's indulgence, the first week of April.

The Court: Also, is there going to be some argument with respect to the second claim, that the court should abstain by reason of unger?

Mr. Graybill: Very definitely, Your Honor, and this (p. 5) is another reason why there really should not be a rush to judgment at this point, because when the supreme court of California speaks on the issue of non-partisan endorsements by party central committees, they are very likely to be speaking to the nature of the powers of those entities, which goes to some of the very central issues and the other two claims.

The Court: The matter of rushing to determine whether or not the court should reach any of those issues in a timely fashion, and it's all going to become, if not moot, at least for this year, certainly, if it's not moved on relatively soon. And I'm concerned about the fact that now you want to raise your motions to dismiss later in April. Your answers were filed in December. There's been plenty of time to file motions to dismiss if you wished to do so on any of those bases, so I am going to set forth an early hearing date, and then I can look at all these issues that you raised on their merits and not have it delayed by reason of being election year.

That's the very reason why it shouldn't be delayed. The action was filed, when, back in October, November?

Mr. Chao: November 17, Your Honor.

The Court: November, and the answers, at least some of them, I haven't gone through all of them, but some

of them were filed in December. And some discovery has been done, so I think that if you intend to move to dismiss or move for (p. 6) extension or whatever, that that's going to have to be set down very early.

Mr. Graybill: Your Honor, I understand the court's concern, but if we stop to think about it a minute, this law has been in effect for, you know, generations. The lead time for preparation of elections is well-known, and the plaintiffs chose the particular time to file their lawsuit. I don't know if it serves the ends of justice to telescope the proceedings when they are going to be complex, sensitive issues, both of jurisdiction and extension issues as well as complicated First Amendment issues.

The Court: The case was filed in November. It's not going to sit on my calendar, I don't care what it is, for an inordinate length of time. He's requested to file a motion for summary judgment, set the matter for hearing. And I said, you could have filed motions for dismissal in December. The fact that you chose not to do so is a matter that's within your province. But in this case, I'm setting the dates and we are going to have to proceed.

If there's basis for extension or if it appears the issues are so complex that further briefing needs to be done, I will make the request, but I don't think it's unreasonable at this stage for counsel to request that the matter be set down for hearing on some dispositive motions.

Mr. Graybill: I understand that, Your Honor, but (p. 7) I have come into involvement in this case just within the past month. The attorney that was involved in this from our office before has taken a leave and before he left, he had a conversation with plaintiff's counsel in which

plaintiff's counsel disavowed any belief that the issues in this case could be resolved by summary judgment.

Mr. Chao: This is not correct, Your Honor. I don't want to get in an argument.

The Court: That has nothing to do with motions to dismiss, and in any event remains to be seen whether, in fact, they can be resolved on summary judgment or any other kind of motions. We will set the hearing on April 2 at 10:30. Papers are to be filed by March 5.

Mr. Graybill:: March 5, Your Honor?

The Court: March 5.

Mr. Graybill: That's next Monday.

The Court: That's correct. If you intend to file a motion to dismiss, counsel, and he's going to file this motion for summary judgment in the beginning of March, I'm going to be hearing the motion for summary judgment before I hear any motion to dismiss, apparently. Now, you chose not to file them. It's up to you. If you want to file a motion to dismiss and have it heard, then you better file it by the time he files the motion for summary judgment.

Mr. Graybill: So the filing papers for all these (p 8) preliminary motions are due March 5?

The Court: March 5.

Mr. Chao: Your Honor, there's one other matter. As I read the local rules, we are to ask leave of court to file a brief that's over 25 pages in length, and if I may make such a motion at this time. Our memo of points and authorities will be in excess of 25 pages.

The Court: By how much?

Mr. Chao: Well, it is—I'm not sure exactly, Your Honor. I would say we would need about 50 pages.

The Court: How about other counsel??

Mr. Graybill: Having to get something on file by March 5, I don't know that we are going to be able to get that much material together, but properly briefed, I think that's realistic. I think we are also going to need, and I guess we will have to leave it to the discretion of the court, we are going to need some discovery on a jurisdictional issues. Whether that's now or later, it's going to have to happen.

The Court: What discovery will you need?

Mr. Graybill: With regard to the case in controversy issue, we believe that the allegations with regard to the interference with the powers of the Central Committees to make regulations in contradiction of some statutes, those are allegations. There are no specific allegations of what (p. 9) regulations they have attempted to make that they feel are prohibited by the statutes, and as a general matter, I don't thing that states any case for controversy. But it wastes a lot of time if we don't know what their actual contentions are with respect to the inhibition or their power to make regulations.

The Court: Have you set forth any factual basis for that in the complaint?

Mr. Chao: Yes, there is, in the complaint, Your Honor, and there will be affidavits in support of the motion for summary judgment which will adequately address all the concerns raised by counsel.

The Court: Counsel, let's do this, because the time is short, admittedly. I will give you a chance to respond to their motions for summary judgment without any discovery in your response. If you need additional discovery, set forth a response what additional discovery you need and approximately how much time you need to do it. I will not rule on any motion for summary judgment if there is discovery that needs to be done in order to address it.

With respect to the jurisdictional aspects of it, it does seem to me that the kind of motion that you're talking about as far as dismissal ought to be able to be done without any discovery. If you can make a good showing in your papers as to why you need discovery on the motion to dismiss, then (p. 10) I will consider whether some appropriate time is necessary in order to allow you to do discovery on that, as well.

Mr. Graybill: And the full statement on that can be resolved to the opposition to the motion for summary judgment when the papers are due?

The Court: When you file your motion to dismiss, you set forth the discovery you need with respect to that, if any. I have no doubts about that. It seems to me what you need the discovery on it to respond to the motion for summary judgment, and then you may so state with respect to the opposition what discovery you need, and then I will not resolve that motion if it appears that there is discovery that needs to be done without giving you an opportunity to do discovery, which of course the rules provide for. Okay?

Mr. Chao: Thank you very much.

The Court: I would request this. If there is some clarification needed with respect to issues that are being

raised by plaintiff in the complaint, that the plaintiff co-operate in providing informal discovery by way of either providing you with a letter or some statement so that if you need some fleshing out of the complaint with respect to those factual allegations, you refer to exactly how they have been interfered with in terms of making regulations, policy, whatever, that he can provide that to you in writing.

Mr. Chao: Very well.

(p. 11) The Court: Okay?

Mr. Graybill: I would hope that we could follow that course.

The Court: If you have any problems, you can call my clerk and set up a phone conference.

Mr. Walenta: May it please the court—

The Court: By disclaiming, we are not going to see your happy face again until all of this is over?

Mr. Walenta: No. We'd like permission not to appear and also, that counsel not be called upon to serve any papers on us within the constraints indicated in our status response, which is that papers that demand any monetary judgment against the disclaiming defendants we wish to receive. If you need an order to that effect, I'll provide it.

The Court: Is there any objection by any other party?

Mr. Chao: We have no objection, Your Honor.

Mr. Graybill: No.

Mr. Hickock: No.

The Court: Will you submit an order?

Mr. Walenta: We shall so do that.

Mr. Chao: Did Your Honor rule on our leave to file a brief in excess of 25 pages?

The Court: I can see why you probably need some. No more than 50, then, and no more than 50 in any opening (p. 12) papers. Your opposition, can you contain that to 35, do you think?

Mr. Graybill: I would hope so.

The Court: Well, the opposition may be no more than 50 pages, also. However, in your reply, no more than 25.

Mr. Chao: Very well. Thank you.

Mr. Graybill: Thank you.

Mr. Hickock: Thank you.

Mr. Walenta: Thank you.

(Hearing concluded)

CERTIFICATE OF REPORTER

I, Joanne M. Far. ll, the undersigned reporter of the United States District Court of the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, do hereby certify:

That the foregoing transcript, pages numbered 1 through 12, inclusive, constitute a true, full and correct transcript of my shorthand notes taken as such reporter

of the proceedings hereinbefore entitled, and reduced to typewriting to the best of my ability.

(Signed) Joanne M. Farrell
JOANNE M. FARRELL
CSR NO. 4838

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE: HONORABLE MARILYN HALL PATEL, JUDGE

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, ET AL,	)	
PLAINTIFFS,	)	
VS.	)	NO. C 83-5599 MHP
MARCH FONG EU, ET AL,	)	
DEFENDANTS.	)	

REPORTER'S TRANSCRIPT

MONDAY, MARCH 12, 1984

TELEPHONE CONFERENCE

APPEARANCES:

JAMES BROSNAHAN, ESQUIRE
CEDRIC CHAO, ESQUIRE
RICHARD MARKLAND, ESQUIRE
PHILLIP HICKOK, ESQUIRE
GEOFFREY GRAYBILL, ESQUIRE
PAUL DIESETH, ESQUIRE
DEBRA LEON, ATTORNEY AT LAW

REPORTER: ERIC WIK, CSR #1245

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(p. 9) Those are the three main points. There is another scheduling point, given the situation, and I don't want to burden anybody with it, but Mr. Chao and I are—who are the lead counsel—he and I are on this case—start an antitrust case in Denver on April the 9th, and that is supposed to go two months, but we would like to see a resolution of this so that the plaintiffs could be guided by whatever resolution there is, in time for the June primaries, and we would close by saying that their rights in these matters are pretty high on anybody's scale of priorities and they are not asking for monies they are not asking for what some people might say are trivial things.

They would like to express their opinions with regard to elections which are upcoming If this continuance is granted they will be unable to do that.

The Court: When was this action originally filed? I don't have the papers in front of me.

Mr. Dieseth: There were two filings, Your Honor. It was originally filed in the middle of November, November the 17th, I believe.

Mr. Graybill: That is correct.

Mr. Dieseth: There was a first amended complaint filed about a month later in, I believe, mid-December.

The Court: Was there any reason why the motion was not brought on earlier, because one of the problems, (p. 10) in all fairness to the defendants, it is a substantial issue to which they have to respond, or issues to which they have to respond, and you know, it was brought relatively, well, several months after it had been filed and in

terms of any critical time involved of course, that only impacted upon the criticalness of the time.

Was there any reason why it couldn't have been brought on earlier?

Mr. Brosnahan: Just a gathering of authorities, if the court please, and the organization of the plaintiffs, in order to bring the case, was quite a laborious enterprise, given all of the different political organizations and all of that.

The Court: Mr. Brosnahan, you wouldn't suggest that it isn't going to be substantially laborious on the part of defendants to respond to all of that?

Mr. Brosnahan: I think it is laborious, but I think the—part of their case is to explain why they restrict this kind of speech and association. That I would expect them to know. That is our position, Your Honor, they should know why they do this. They have a whole regulatory scheme out there. They ought to know why they do it.

The Court: The problem is being able to respond to that question, or those issues, within a relatively short period of time.

(p. 11) Mr. Brosnihan: I realize that.

The Court: How much leeway do you have, do you and Mr. Chao have in your schedule in Denver? In other words, is that case actually going to start on April the 9th?

Mr. Brosnahan: We are in front of Judge Feinsilver and, Your Honor knows how these matters are, but Judge Feinsilver has impressed us greatly with the idea that this is going to start on April the 9th. There doesn't seem to

be a resolution in the offing. I don't want to burden everybody with that now, but it is a problem, to some extent.

The Court: Well, what I am contemplating is some reasonable extension, not to the extent requested by the defendants, but some reasonable extension of time. The problem that results is that the hearing would have to be postponed, either until the end of that week, where it is now set, or until April the 9th.

Now, I suppose its depends—or sometimes that week—it depends on what kind of leeway you have to either get away or plan to start that case a day later, or whatever.

Mr. Brosnahan: If Your Honor sets something, I will go immediately to Judge Feinsilver and ask him for his indulgence, whatever it might be.

The Court: Well, how long will it take for you to respond, and file your reply to the defendants' papers?

Mr. Brosnahan: We can do that in a week or ten (p. 12) days, I think.

The Court: Well, what I will do is I will give defendants until the 26th of March to respond, and I will give plaintiffs until the 2nd of April to file their reply, I mean, keep in mind that I am going to have to read this, and come up with a decision at some point, as well.

What I would prefer to do is set the matter for April the 9th. How is that calendar right now? Do you know? April the 9th at 10:30 for a hearing. If you have a problem with Judge Feinsilver, what I think we can do is arrange to have it heard that Friday. I would not have had

as much time to go over the papers at that time, that is the problem .

Mr. Brosnahan: That is fine. I will try to communicate with Judge Feinsilver, as well.

The Court: I know that doesn't give defendants as much time as they asked for, but time is critical. I am keeping in mind the burden that you do have.

If there are factual issues that you have not been able to reach, either because of discovery or investigation problems, then I suggest what you do is that you set those forth, those problems forth in your papers when you file them. Now, it is not automatically going to give you additional time to file papers after the hearing. So don't depend upon that. But if those are critical, and you have not been able to compile whatever factual matters that you have to have (p. 13) in order to respond, you may set those forth in your papers here when you file them on March the 26th.

Mr. Graybill: That has been our main concern, is being able to protect the record on appeal by providing as much factual background as possible, because the United States Supreme Court, just this term, in a case called *United Building and Construction Trades Council of Camden vs. the Mayor and City Council of the City of Camden*, indicate that in this type of a case, where you are litigating constitutional issues, the factual background is critical.

The Court: Well, what I am suggesting is that I am going to look very, very carefully at diligence and necessity in this case, but I am certainly not going to decide a case based upon a partial record. That bodes poorly for

fitting it back at some point in time, and having to do it over again, which I really don't want to do.

So while I recognize that time is of the essence in this connection, I do expect that we will be able to decide it on a full record. So if you can show in your papers when you file them on March the 26th, that there are factual issues that you have not been able to obtain evidence on because of the time constraints, and that you have exercised due diligence, and they are necessary to the resolution of the case, then I will consider that, but what I am talking against is using that as an open door for not doing some things between (p. 14) now and March the 26th.

Mr. Graybill: We are proceeding—this is Jeff Graybill in Sacramento, Judge Patel. We are proceeding ahead with all the resources that are at our disposal on this. One thing I would inquire of the court.

The Court: Yes.

Mr. Graybill: The defendants have a motion to dismiss on jurisdictional grounds.

Should that proceed as scheduled on April the 2nd, or should it be heard concurrently?

The Court: Well, let's just hear them concurrently at this stage. I told you my feelings about that. That could have been filed a long time ago. If you are going to file it, then I will be heard on the same date.

Mr. Graybill: Okay. It has been filed, Your Honor.

The Court: Has it been filed? Well, then, it will be heard on the same date.

Would you submit an order, please, and the order will indicate that you are given until March the 26th to file your opposition. Plaintiffs are given until April the 2nd to file their reply, and the matter is set for hearing on April the 9th at 10:30, absent some other order by the Court setting it for no earlier than April the 6th.

Mr. Graybill: Your Honor—

The Court: Yes.

(p. 15) Mr. Graybill: Was that request for an order directed to defendants?

The Court: Yes. You are the one who is asking for it, so you get to do the paperwork.

Mr. Graybill: Very well, Your Honor.

The Court: Anything further?

Mr. Brosnahan: No, thank you.

The Court: Thank you.

Mr. Brosnahan: Thank you. Okay.

The Court: Bye-bye.

Mr. Brosnahan: Goodbye.

(Telephone conference concluded.)

CERTIFICATE OF REPORTER

I, Eric Wik, the undersigned reporter pro tempore of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, do hereby certify:

That the foregoing transcript, pages numbered 1 through 15, inclusive, constitute a true, full and correct transcript of my shorthand notes taken as such reporter to the proceedings hereinbefore entitled, and reduced to typewriting to the best of my ability.

/s/ Eric Wik
ERIC WIK, C.S.R. # 1245

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, ET AL.,	
PLAINTIFFS,	
-VS-	NO. C-83-5599-MHP
MARCH FONG EU, SECRETARY OF STATE OF THE STATE OF CALIFORNIA, ET AL.,	SAN FRANCISCO, CA MONDAY, APRIL 9, 1984
DEFENDANTS.	

MOTION FOR SUMMARY JUDGMENT AND
MOTION TO DISMISS

REPORTED BY: PAUL SCHILLER, C.S.R.

(p. 12) It became codified as part of the truth in endorsements, because impostors, namely the California Democratic Council and the California Republican Assembly, were making it appear that they were making official endorsements on behalf of the parties, and I think the indications are that the parties themselves got in there and got the statutes passed, "we don't do this, we don't want anybody doing it in our name."

The Court: Just a moment. If there is a Central Committee, who is the plaintiff in this action, who wishes

to endorse a particular candidate, and they vote to do so in a direct primary, you are suggesting that they may do so and not be in violation of the law?

Mr. Graybill: Well, they are obviously in violation of Elections Code Section 11702.

The Court: Yes.

Mr. Graybill: In our view, they are not in violation of the Elections Code Section 29430 or 29102. Those are the statutes that plaintiffs ironically enough insist they must be prosecuted under.

The Court: Let me ask you about violation of 11702. The Central Committee of the city and county of San Francisco decides that there is a particular candidate they want to endorse in the direct primary, and despite the law to the contrary, based upon your assurances, of course, (p. 13) that they are not going to be prosecuted, they go ahead and endorse this candidate and let it be known through various kinds of brochures, communiques, whatever, that this particular candidate is being endorsed.

And you are approached by a very vociferous opposing candidate, who is very unhappy about this, because they violated the law. You are not going to enforce that provision against the Central Committee? I guess what you are saying is that you are not going to bring an action to enjoin them or seek any permanent penalties against them?

Mr. Graybill: Your Honor, pursuant to the Eleventh Amendment, the only thing that we are answerable for—

The Court: I want an answer to my question.

Mr. Graybill: The answer that I can give you is that we have not done so in the past. We do not view there being any criminal provisions involved here. Our attitude has been that it is primarily a statute protecting the rights of the individual party members that is available there. Without those provisions the party members themselves would not have a hook.

The Court: That does not answer my question. Are you prepared to tell those members of San Francisco County Democratic Committee that if they endorse candidate X in the primary, and candidate Y comes and complains to you, that you are not going to seek to enjoin them from violation (p. 14) of the law?

Mr. Graybill: You are asking a hypothetical question that I can't really answer. All I can do is point out to you what the history of our involvement is, what our attitude has been.

We have never been involved in the enforcement of those statutes, never. None of the defendants, either from a civil enforcement action with respect to non-partisan endorsement or criminal enforcement, we are not here in a situation, and I don't think that we can bootstrap jurisdiction by asking me to answer a hypothetical question.

The Court: But the law says it is a violation of the law. They are entitled to know, because their First Amendment rights are seriously implicated and presumably because they are involved actively in the political process, they want to obey the law, they want to know if they violate the law, what is going to happen to them.

Mr. Graybill: Your Honor, you might as well ask that question of their fellow party members who unfor-

tunately are not represented before this court, because they can enforce those statutes.

The Court: There may be a lot of them out there waiting to file civil actions.

Mr. Graybill: There may be a lot of irate party members who have been relying on the fact and assumed (p. 15) they will have neutral party organizations with respect to party in-fighting in the primaries, and I would expect that if there are official endorsements of candidates, where there is a significant contest, there will be injunction actions.

What I want the court to understand is that no party has done that throughout the history of the state so far as we can understand. It is so engrained in the policy.

What we are really talking about here is the First Amendment rights of the parties themselves. The parties have defined the role of these Central Cimmittees. These people were not elected to endorse candidates, it is clear from long-standing party policy that is now reflected in state law at the behest of parties, that that is not part of their role.

Their primary role by statute and party tradition is to campaign for the nominees of the party who are elected by the members of the party at the primary election. They don't have standing to raise that issue.

Let's take a moment, I notice that the plaintiffs were indicating that our policy discussion in our brief was not satisfactory, because we did not discuss some of the cases they cited, the *Ripon* case, *Ripon Society Versus The National Republican Party,* in the District

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(p. 46) and *Canton* and all the rest, counsel.

Mr. Graybill: It does get complicated.

If I may, I would like to borrow a metaphor from my distinguished colleague, and that is that *Fahey v. Darigan,* which is relied on pretty heavily in my colleague's remarks, highlights the very humble nature of the claim submitted to this court by the plaintiffs today.

The court in *Fahey* pointed out—and I would initially like to point out—that there you had several members of a party suing another member of the party with respect to their rights and obligations under state law, a classic case of controversy, and one of the things that the court noted there was—and it seemed to make a difference in the way it was approached, that the party chairman who apparently had engineered that statute to give him the power to pack the committees, based on supposedly an implementation of the national party policy, pointed out that there was no evidence that that chairperson had the support of the county committees when he did that.

So there the court found there was absolutely no state interest. The statute applied to a particular central committee of a particular city, no other cities, just that particular city.

There was no evidence that the local party itself had requested that, only that the chairman did, and under (p. 47) those circumstances the attorney general of that state, even at the request of the court, declined to appear, because it was purely a local matter.

The point is very important with respect to what we have here. I have not received the declarations referred

to by my distinguished colleague that supposedly establish that the bylaws of the particular central committees that are purportedly before the court were complied with in authorizing this lawsuit.

That is the same type of situation that was of concern to the court in *Fahey*.

The *Ripon* court also indicated under those circumstances, and I think it is important what the plaintiffs did not do when they were before this court in oral argument or in their papers, they did not really deny that these statutes do not reflect the policies of the party.

We have presented this court with evidence that they do, and under those circumstances there would be no substantial interference with the associational rights and the first amendment rights of the party or its members as members of that party.

The *Ripon* case indicates that very clearly, where you have that kind of dispute, and that is what we have got in this particular case. We have not been able to persuade the state parties to change those policies, and I think (p. 48) if the court—you know, we have indicated that we are developing an extensive factual basis to establish that nexus, I think the court in *Anderson versus Celebreeze* recognizes there is a distinct probability that that is the case.

The plaintiffs here do not refute the factual proposition that these matters reflect the policies of the parties. What they say in their reply brief is that even if it does, they have the first amendment rights as individuals, and they can't assert their rights as party organizations, as

central committees, because those have been defined by the parties themselves over time to be of a limited function.

I notice that the court was concerned about the statute passed in 1963. The plaintiffs have pointed out no incident where a state party or a county central committee has endorsed a candidate prior to that time. The opinion of our office by Justice Friedman issued in 1954 indicated that they did not take place, that there was an inquiry as to whether an amendment as to the statutes governing the power of the central committees authorized that.

It was our view in light of the long-standing policies of the parties themselves and the symbiotic relationship between the direct primary law and the policies of the party, that there was no such authorization in the (p. 49) statute for endorsement, and so far as we know, from the period prior to 1954 up to 1954, there had not been any endorsements.

From the period from 1954 to 1963, there had not been any endorsements, there is no evidence of that at all.

The only reason that that could be is because that is the position of the parties and under those circumstances there is no substantial interference with the rights of the parties where the state statutes themselves track that policy.

Under those circumstances the rational basis test, and that is that the *Socialist Workers Party,* I don't know how we could characterize a decision of the ninth circuit in this area governing the standard of reasoning that must be applied in this case as humble—I generally heard that referred to as controlling.

The Court: Are you suggesting, are you questioning the veracity of the affidavit? The declarations that have been filed in this case as to those who intend to or desire to but for this law endorse?

Mr. Graybill: I have not seen the declarations that have been referred to. I have asked for them, I have asked for the bylaws of the particular committees so that we can analyze what those declarations say as to whether the action taken is proper. And I think that is a fundamental obligation, these plaintiffs are coming before this court (p. 50) asking it for equitable relief. They have to demonstrate that they come to the court with clean hands and that they have done equity themselves.

They are here purporting to represent others in a way that long-standing party policy and state statute indicate that they have no authority to do. That raises a question in and of itself, and I think the people whose interests are not being represented before this court have a right, when plaintiffs come in purporting to represent them, that that underpinning is there.

The court in *Fahey versus Darigan* was sensitive to that. The court in *Ripon* was sensitive to that. We are talking about associational rights of the parties and there is strong indication before this court, and I don't think that in light of the absence of any refutation, really by the plaintiffs, I think that the defendants, if there were jurisdiction in this case, would be entitled to summary judgment, because there is no substantial issue of fact that these policies track the policies of the parties.

The Court: Is there anything further, counsel, because it is getting late and the reporter has been at it for a long time. I will give you five more minutes.

Mr. Graybill: I beg the indulgence of the court.

I also would like to point out to the court that the cases with regard to Article III that have involved (p. 51) facial attacks, have involved statutes that are practically brand new and on their face apply in criminal provisions, and even in that circumstance I would point out that the United States Supreme Court recently in the case of *Babbitt versus The Farm Workers* found that there was not a ripe case or controversy where, as in this case, the relief to be provided or the actions of third parties are implicated, and the interests and the expression of those is in doubt.

You have the ripeness provisions as well as the state case or controversy situation. I think the Supreme Court has indicated in *Simon versus Eastern Kentucky Welfare Rights Organization* and *Warth V. Seldin* and *Babbitt* that it is very important that these issues, where the court's equitable jurisdiction is being invoked, that there be no question that the issues are ripe.

There is a very serious question here as to what the policies are. In fact, the unrefuted circumstances are that these statutes track the policies of the party.

Now, I don't know whether the court has an intended ruling, but if any of the rulings are adverse to the defendants, we would respectfully request that the effectiveness of any of those rulings be stayed for 15 to 20 days, so that we can evaluate just what the nature of the order is and what procedure we should follow at that point.

The Court: With respect to a stay, anticipating (p. 52) that there might be some adverse rulings to the state, do you have any response to that, Mr. Brosnahan, or do you want to wait and see what happens?

Mr. Brosnahan: I would like to, Your Honor. Our concern, of course, is the election and I would just, if Your Honor gets to that point, or whatever Your Honor does have in mind—

The Court: I will give you a tentative ruling as to what I intend to do, at least at this stage.

The Court: I will give you a tentative ruling as to what I intend to do, at least at this stage, and that may be subject to some change.

Then, what I think I will do is issue and order as soon as possible, and that with a decision to follow that will flesh it out, so that because of the time constraints involved those can be recognized.

I am not persuaded by any standing challenge that is made by the defendants that the parties who raised the issues involved here do not have standing. Clearly, it is their very associational rights that they put in issue. And let me dispense with *Pennhurst,* because *Pennhurst* has absolutely nothing to do with this case, at least in its present posture.

Pennhurst has to do with whether or not the court could order a state to comply with its own law. The last thing the plaintiffs want me to do in this case is to order the state to comply with the law. They are alleging that (p. 53) the law is directly in conflict with their First Amendment rights, they are claiming that, and *Pennhurst*

does not stand for that proposition and I trust that the Supreme Court is not going in the near future to hold for the proposition that parties may not come into Federal Court and challenge the actions of a state when they believe they are in conflict with their First Amendment or other federal constitutional rights.

So I will dispel the notion with respect to *Pennhurst* and its application to this case.

The no case or controversy is a little more difficult, admittedly. I think the defendants made far too much that the state embodies the policy of the party, and therefore they can hide behind that, and that the committee cannot challenge the statute, that their quarrel essentially is with the party.

That may well be, but whoever provided the impetus for the laws involved did, in fact, get them on the books and they are statutes such as do provide for criminal penalties, and I note through all of the declarations that have been filed, that while there is a stated intention not to enforce Section 11702 in connection with criminal penalties, on the belief that there are no criminal penalties for 11702, there is no statement that the parties, the defendants, will not enforce 29430, which does provide for criminal penalties, and some of the allegations in this complaint go not only to the endorsements themselves but to the use of those endorsements, and indeed I don't know why the committee would even want to (p. 54) endorse, but 29430 does compel the state to proceed criminally against individuals who violate that section.

I have seen nothing from the various state district attorneys who filed their declarations or affidavits indicating that they would not enforce the provisions of 29430.

I have not finished, counsel, and your chance for argument is over. If I'm wrong, you can take me up on appeal.

With respect to the threat of enforcement, I don't think that you have an *Ullman* situation, where you have a statute that has been on the books for a long time and flagrant violations. You have a statute that is not relatively new but it has been on the books for some time, for which there really is no evidence that since its enactment it has been violated. Therefore, you do not have the test of flagrant violations, and an indication on the part of the state by virtue of its action that it does not intend to enforce.

The state has not indicated that they would not enforce civilly the provisions. I find it curious that the state is so anxious to defend a statute that it has no intention of enforcing, apparently, but that is a decision that perhaps is only curious in observation and has nothing to do with the ruling here.

But indeed if there is an area that I think is unique, an area of political involvement and a climate where disgruntled candidates—to paraphrase Shakespeare—"Hell (p. 55) hath no fury like a disgruntled candidate," are likely to come forward and seek out enforcement. Who knows how many *Ungers* there are, who want to enforce civilly the provisions of the statute.

Indeed, *Unger* sought to enforce a statute contrary to interpretation rendered by the attorney general. Of course, the courts of California to date have held contrary to that opinion as well.

That, coupled together with the infringement upon First Amendment political rights, which are probably the

most precious, and First Amendment associational political rights, which are the most precious in this society, I think together with the fact that the plaintiffs have indicated their fear of violating the statute and the fact that they have not acted in contravention of it for that very fear and the consequences, if they should do that, as politically active individuals, essentially confronting and violating the law, I find that they do not have to do that. That the case of controversy requirements are met under those circumstances and they are met in this case, and therefore they are entitled to challenge the law.

Now, with respect to that, that means that the motion to dismiss to that extent is denied, and I would deal with that aspect of it as well with respect to summary judgment.

(p. 56) The statutes are a clear abridgment of first amendment rights and the state must show a compelling state interest. They have failed to show that. They have even failed to show rational interest. We have essentially one declaration from a member of the legislature, much of the language is speculative, they failed to respond to declarations submitted by the plaintiff in an adequate fashion to justify a rational interest and maintain the statute, and I do point out they are reluctant even to enforce it.

So I am not sure what the compelling interest is, but in any event, even assuming that the arguments they raise are factional, they have not submitted any factual support for a rational basis, let alone a compelling interest in justifying that statute.

I find the same with respect to those aspects of the statute that attempt to regulate how authority operates and runs itself internally insofar as it has to do with the

selection, the length of term, and the dues—those provisions that have to do with where it meets, and when and where the party would like to make the selection itself, I don't find it imposes a substantial burden, at least I have not seen facts to support that. I am not sure why the state should be so concerned about it.

Before I even engage in any inquiry as to those issues, there must be a showing that it does impose a (p. 57) substantial burden upon the associational or first amendment rights, and I find as to those aspects of the statute that has not been met.

Now, a more difficult question comes to the one of abstention, and while abstention is to be carefully eschewed, however live and well, I cannot see a decision coming down from the California Supreme Court that is not going to have some substantial implications upon how this case should be decided, if this court were to wait.

Indeed, I think it may be very likely that the state in that case would resolve issues based upon state law making it unnecessary for this court to reach the constitutional issues, therefore as to the non-partisan elections, I am inclined to abstain from those, and that is likely to be how the order will look when it comes out, hopefully fleshed out with some more reasoning in a memorandum decision or order that will follow, but I will try to get an order out today or tomorrow.

As a matter of fact, Mr. Brosnahan, since you have prevailed for the most part, I know from the volumes of paper I received, that I have no capability to fight back with my one word processor.

Would you prepare an order outlining generally what I have indicated how I am going to rule, and I will sign it as soon as possible and then I will flesh it (p. 58) out with a memorandum decision or opinion.

Mr. Brosnahan: Fine, we will do that.

The Court: Yes.

Mr. Graybill: Your Honor, how will the order read with respect to the stay provisions? These are, with all due respect, statutes and policies that have been in effect and have governed California elections for 80 years.

The Court: But they implicate fundamental constitutional rights, and I would deny a stay, and you may indicate in the order, if you want a stay you can go to the Ninth Circuit for maybe not so humble an opinion as mine.

(Proceedings concluded.)

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE et al., Plaintiffs, v. MARCH FONG EU, Secretary of State of the State of California et al., Defendants.	Case No. C-83-5599-MHP DECLARATIONS IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANTS' MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT Date: April 9, 1984 Time: 10:30 a.m. (Filed March 29, 1984)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF ALBERT S. RODDA, JR.

I, ALBERT S. RODDA, JR., declare as follows:

1. I have been active in the affairs of the California Democratic Party throughout my adult life.

2. From 1958 until 1980 I had been elected and re-elected as the nominee of the Democratic Party to represent Sacramento County in the Senate of the California Legislature. I represented Sacramento County in the State Senate continuously from 1958 through December 1980.

3. I earned a Ph.D. in American History from Stanford University in 1951 and taught economics and California history at Sacramento City College from 1946 to 1967 when I resigned to devote full time to my duties in the State Senate.

4. From 1952 through 1958 I was a member of the Sacramento County Democratic Central Committee and served as chairperson of the Committee during 1956 and 1957.

5. As a member of the State Senate I was, pursuant to the Charter of the California Democratic Party as ratified by statutes of the State of California, a member of the California Democratic Central Committee.

6. During my twenty-two years in the State Senate changes to statutes regarding the structure and procedures

of the major political parties were enacted at the request and with the concurrence of the party affected. The members of the Legislature from one political party acquiesced in and did not attempt to influence legislation sponsored by the members of the other party regarding the affairs of that party. The legislation regarding the affairs of a political party was enacted, therefore, at the request of and with the support of the party affected.

7. The Democratic and Republican parties of California have traditionally supported the California election law which denies the state convention, the state central committee, and the county central committees the authority to endorse candidates seeking the nomination of the party in a primary election. The reason for this support by the parties for the past half century is the determination to guarantee a continuation of the delineation of party responsibilities embodied in the original law which was enacted in 1911 as a result of a political reform movement engaged in by the leaders of both parties.

8. During the time I have been a member of the Democratic Party the role assigned by the party to the convention and the central committees has been that of working for the election of the party's nominees for statewide office, the Legislature and Congress. The central committees, especially the county central committees, must be cohesive and aggressive teams in order to carry out this function.

9. If state and county central committees were allowed to endorse candidates for the party's nomination, my experience in party affairs convinces me that the process of determining an endorsement which is contested,

even if the endorsement is ultimately unanimous through abstentions or otherwise, would produce divisiveness in the committee which would impede its ability to carry out its primary function—that of working for the election of the party's nominee in the November general elections.

10. State and county central committees, by virtue of the fact that they do not participate in primary elections, are able consistently to function as a self-healing mechanism for the party because the credibility of the committee as a neutral has a capability of functioning as a catalyst through which the previously competing factions within the party can cooperate in achieving the election of the party's nominees.

11. There is a possibility also that the divisiveness resulting from central committee involvement in partisan primary elections will weaken the loyalty of elected officials, including members of the Legislature, to their party and generate over a period of time some political momentum to return to the cross-filing type of primary, a practice in California which favored incumbents and weakened the effectiveness of political parties. Such an eventuality would tend to dilute even further the influence of the political parties in the election of partisan officeholders.

12. The dynamics involved in endorsement by central committees of candidates for nonpartisan office are similar. The endorsement process creates divisiveness within a central committee which can adversely affect the committee's ability to campaign effectively for the party's nominees in the November elections, which is the committee's primary function and the justification for its existence. Moreover, successful candidates for nonpartisan offices whose opponents were endorsed by a central committee will, in many cases, carry resentments against the party organization during their political careers which is likely to be contrary to the interests of the party organization.

13. The uniform ban on primary endorsements by state and county central committees effected by state law has been supported by both the California Democratic and Republican parties because it is unquestionably in their interests.

14. The parties have established central committees for the purpose of securing the election to office of the nominees who are selected by party members at the primary elections. Everyone who seeks election to a county central committee and is elected knows that that office is limited in its responsibilities and that that is its function. Democratic and Republican county committee members who seek to expand this role to pre-primary endorsements are undertaking an effort to change dramatically the concept embodied in the primary election law which was originally enacted in this state by a coalition of reform Republicans and Democrats as a means of strengthening the role of the people in the political process and weakening that of organized special interest groups which dominated California politics in the latter part of the 19th century and the first decade of the 20th century. The abandonment of this practice, nonendorsement of nonpartisan candidates and of partisan candidates in primary elections, will create intraparty fragmentation into rival groups and generate serious personal rivalries and factionalism.

15. The wisdom of the ban on endorsements by state and county central committees is borne out by an experience I had as a member of the Sacramento County Democratic Central Committee. In accordance with procedures set out in its bylaws, the committee in early October approved a brochure in the form of a sample ballot for the November general election marking the Democratic Party's nominees for all of the partisan offices on the ballot. Afterwards and without presenting it for consideration by the committee in accordance with the bylaws, the chairperson and a few of his associates added the name of a candidate for the superior court to the brochure and marked the mock ballot demonstrating an endorsement by the committee. Not only did the vast majority of the committee view the endorsement as illegal, as a violation of state party policy and as in violation of the policy and procedures of the committee, but they did not favor the candidate who was endorsed. This incident created so much divisiveness and bad feeling amongst the members of the committee that it could not function in the remainder of the general election campaign. The newspapers gave extensive coverage to the conflict within the committee.

16. Opportunities abound for party members to associate in endorsing candidates for the nomination of the party and for nonpartisan office. I have been active in several such associations which have been very effective. I was an active leader in Sacramento County in bringing into existence the California Democratic Council in the early fifties and in helping create a number of local Democratic Clubs. I also have been a member of the Harry S. Truman Club since its establishment in Sacramento. It supports, on a selective basis, Democratic candidates

seeking the nomination of the party in partisan primary elections and also candidates for nonpartisan elective office who are registered as Democrats.

17. The Democratic Party has among its members persons of all ethnicities and races and of widely varying backgrounds whose interests and views are often conflicting. One of the features of the party which distinguishes it from other political parties and commands the allegiance of its members is its commitment in its own governance to openness and responsiveness to all factions. I have read the first amended complaint of the legal action for which I am submitting this declaration. The statutes which are challenged by the complaint are essential to preventing one faction or another from co-opting official party organizations at the state or local levels. Without the power to endorse candidates for the party's nomination or nonpartisan office, factions have little incentive to try to co-opt central committees and therefore persons interested in doing the "nuts and bolts" work of the party become members of the central committees. When co-option of a party organization by a faction occurs the other factions are often excluded from effective participation in official party organization, become alienated and their allegiance to and confidence in the Party dissipates. The effectiveness of the Party is severely damaged as a result. The statutes regarding party organization and procedure provide some protection against devices used by factions to exclude others from participation in party affairs.

18. My career and experience demonstrate, and I know, that the individual plaintiffs can associate with others to effectively participate in the campaigns of their favored candidates for the party's nomination or for non-

partisan office notwithstanding the bans by statute and party policy of endorsements by official party organizations. Party organizations can and do provide or sponsor workshops for interested potential candidates. There is never any shortage of interested and qualified candidates and the voting members of the party are perfectly capable of discerning which candidate for the nomination or nonpartisan office fit their perception of what a "good" Democrat is.

19. In 1972 I authored Senate Constitutional Amendment 32 which revised article II of the California Constitution relating to suffrage. SCA 32 was passed by the Legislature and signed by the Governor. It was adopted by vote of the people as Proposition 7 on the ballot for the general election in November 1972. A copy of the ballot pamphlet for the November 1972 election as it pertains to Proposition 7 which was distributed by the California Secretary of State to all registered voters is attached hereto as Exhibit A. Also attached hereto as collective Exhibit B are a copy of a letter, with a five-page attachment, from me to all of my colleagues in the Senate explaining SCA 32 and urging its passage, a copy of the report of the Constitution Revision Commission upon which sections 4 and 5 of article II as enacted in 1972 were based and a copy of the report of the Senate Elections and Reapportionment Committee on SCA 32.

20. As is apparent from Exhibits A and B, section 4, relating to primary elections for partisan office did not eliminate any of the power of the Legislature to regulate political parties and the terms and conditions upon which political parties may participate in primary elections. As the Constitution Revision Commission points out in its

analysis, the verbiage of former section 2.5 of article II relating to primary elections was unnecessary because the Legislature notwithstanding section 2.5 of article II had the power to and had enacted a comprehensive scheme of law governing political parties and their participation in primary election which would be unaffected by enactment of section 4. As I explained to my colleagues in the Legislature and the voters in urging them to enact SCA 2 and Proposition 7, section 4, effected no change in the Constitution but merely eliminated excess verbiage.

21. As is apparent from Exhibits A and B, I also explained that section 5 continued the ban of section 2¾ on participation by political parties in elections for judicial, school, county and city offices but merely changed the outdated term "township" to the modern term "city" and eliminated verbiage which was redundant due to existing status governing elections which the Legislature was otherwise empowered to enact.

If called as a witness, I would testify of my personal knowledge as stated above.

Executed at Sacramento, California, on March 23, 1984.

I declare under penalty of perjury that the foregoing statements are true and correct.

/s/ Albert S. Rodda, Jr.
ALBERT S. RODDA, JR.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF GEOFFREY L. GRAYBILL IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANTS' MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT

Date: April 9, 1984

Time: 10:30 a.m.

I, GEOFFREY L. GRAYBILL, declare as follows:

1. I am an attorney licensed to practice law in the State of California, a member of the bar of this Court, and as a Deputy Attorney General of the State of California am a counsel of record for most of the defendants herein.

2. Appended hereto as Exhibit A is a true and correct copy of a letter dated March 19, 1984, which I wrote and caused to be mailed to plaintiffs' counsel of record on the date of the letter. The letter requests information in the possession or under the control of plaintiffs or their

counsel. The requests for information were, as stated in the letter, read by me over the telephone on March 19, 1984, to Paul Dieseth who represented to me, as he acknowledged each request, that he was writing them down.

3. As is apparent from the defendants' memorandum of points and authorities which is submitted with this declaration, the requests set forth in the letter are designed to illicit information which may constitute evidence or lead to admissible evidence which demonstrates that the views expressed by plaintiffs are contrary to the positions of their respective parties, that plaintiffs knew this prior to bringing this action, that the statutes which they challenge were enacted at the request of and/or with the active support of their parties, whether the plaintiff county central committees and State Central Committee of the Libertarian Party authorized this action to be brought in their names, the scope of the authority of such central committees pursuant to their bylaws and whether a particular faction of factions within have been advocating the relief requested by plaintiffs. All of this information is relevant to the issue of whether the First Amendment rights asserted by plaintiffs are affected by the challenged statutes, whether the relief requested would impair the First Amendment rights of persons not parties to this action but on whose behalf plaintiffs purport to speak and whether plaintiffs have standing to invoke the jurisdiction of this Court.

4. As of the date of this declaration, none of the requested information has been received from plaintiffs or their counsel. Plaintiffs' attorneys, Mr. Chao and Mr. Dieseth, have informed me that they will be objecting to

most of the requests and will not be providing most of the rest of the information within the period allowed for briefing in this case.

5. I have contacted the offices of the Democratic and Republican State Central Committees by telephone requesting information regarding the positions that the Central Committees have taken at any time one the statutes challenged in this litigation and an opportunity to review the agendas and minutes and related documents of the committees and their executive committees. The chairperson of the Democratic State Central Committee, and the Executive Director of the committee were unavailable but I did speak with the political director of the Central Committee, Kris Schwenkmeyer, on or about March 19 or 20, 1984. Ms. Schwenkmeyer informed me that a proposed resolution to join as plaintiffs in this action was presented to the Executive Committee and was rejected. I gave her my address and phone number and requested that she send me a copy of the resolution and the minutes manifesting the disposition of the resolution; she assured me that she would do so. The Democratic State Central Committee conducts its business from its Los Angeles office this year. As of the date of this declaration I have not received a copy of the resolution or the minutes.

6. In the same conversation, I requested an opportunity to review the minutes and agendas and related documents of the Central Committee for information regarding the enactment of the statutes challenged in this litigation and the party's policies regarding the subject matter. Ms. Schenkmeyer told me that she did not know where such documents were kept or whether they exist. Ms. Schwenkmeyer stated that she was not aware of any

action taken by the Central Committee or the Executive Committee requesting repeal or amendment of any of the statutes in question. She stated that she would contact an employee of the central committee who might know and ask her to call me because the person was working part-time so that I could not contact her. I requested that the Executive Director return my call. As of the date of this declaration, I have not heard from anyone representing the Democratic State Central Committee.

7. On or about March 21 or 22, 1984, I contacted the offices of the Republican State Central Committee in Sacramento by telephone and asked to speak to the chairperson or the Executive Director neither of whom was available. I did speak to John Rico, the Political Director, and requested of him the same information requested of Ms. Schwenkmeyer. He informed me that the Chairperson of the State Central Committee had been contacted by some of the plaintiffs in this action and was invited to join as a plaintiff but in what capacity, i.e., as chairperson and/or on behalf of the State Central Committee, was unclear. Mr. Rico informed me that the chairperson refused to join in any capacity. Mr. Rico stated that he was unaware of any action by the State Central Committee or the Executive Committee requesting repeal or amendment of the statutes challenged in this action. He also informed me that the records of the State Central Committee were kept in both Burbank, California, and Sacramento and that he was unaware of just what these records contained.

8. The files of the author of the legislation originally enacted what is now Elections Code section 11702 are not in the State Archives. The legislator is dead and I am informed by former members of his staff that his legislative files are in the possession of his widow in El Monte, Cali-

fornia. Records relating to enactment of section 11702 could demonstrate the involvement of the political parties in enacting that statute.

9. I was assigned to represent defendants after the answers to plaintiffs' requests for discovery were submitted on January 27, 1984. The deputy previously assigned to the case had to take a leave of absence which required reassignment of the case in light of the status conference in this case scheduled for February 27, 1984. I have had to adjust an otherwise full caseload to handle this case. When I was informed by the court on February 27 that all motions had to be filed by March 5, 1984, I had to request extensions of time from other courts on matters pending before them in order to try to accommodate the unexpectedly tight time constraints imposed in this case.

10. Contacting witnesses, researching the law, preparing the documents and memoranda filed in this action within the unusually tight time constraints of this case has not permitted development of evidence as indicated in this memorandum which I am convinced should be in the record of this case to protect defendants' rights on appeal if a judgment is entered against them on any of the causes of action in this action.

If called as a witness I would testify of my own knowledge as stated herein.

Executed at Sacramento, California, on March 26, 1984.

I declare under penalty of perjury that the foregoing is true and correct.

GEOFFREY L. GRAYBILL

March 19, 1984

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San Francisco County Democratic Central Comm., et al. *v. March Fong Eu*, et al., U.S. District Court for *Northern District of California, No. C 83-5599 MHP*

Dear Mr. Brosnahan:

Pursuant to the instructions of the court and the assurances of cooperation by your co-counsel at the status conference conducted by the court for this action on February 27, 1984, defendants make the following informal requests for discovery due to the usually tight time constraints within which the motions for dismissal and summary judgment now pending before the court were required to have been filed and heard. These requests were transmitted by telephone to your associate Paul Dieseth on March 19, 1984.

1. Minutes or other documentation reflecting the votes of the members of the plaintiff county central committees authorizing the instant litigation and each cause of action thereof. State whether all votes were cast in person at a meeting of the committee and, if not, a detailed description of how such vote was taken.

2. If no such documentation exists, a sworn statement on personal knowledge of how authority to sue was attained from each plaintiff county central committee.

3. Roster with names, home addresses and phone numbers of each member of each plaintiff county central committee.

4. Copies of by-laws and other written statements of procedure and policy of each plaintiff county central committee.

5. Copies of the current constitution, charter, by-laws and rules of the national Republican, Democratic and Libertarian parties in the possession or under the control of any plaintiff.

6. Copies of the current constitution, charter, by-laws and rules of the California Republican, Democratic and Libertarian parties in the possession or under the control of any plaintiff.

7. Copies of any written communications within the past five years from any national or state central committee of the Republican, Democratic and Libertarian parties or officials thereof regarding matters complained of in this litigation in the possession or under the control of any plaintiff.

8. Copies of all written communications within the past five years from all plaintiffs to the national committees, California state central committees and officials thereof of the Democratic, Republican and Libertarian parties regarding matters complained of in this litigation.

9. All of the information and documentation identified in requests 1, 2 and 3 above with respect to the plaintiff state Central Committee of the Libertarian Party of California.

10. All written communications in the past five years received by any plaintiff from organizations or groups or officers or employees thereof or sent by any plaintiff to such entities or persons regarding the issues raised in this litigation.

Defendants request that complete responses to the foregoing requests, with copies of the indicated communications, be provided in writing at the office of the undersigned if at all possible no later than Friday, March 23, 1984. As you pointed out to Judge Patel on March 12, when you opposed defendants' application for an extension of time to properly respond to plaintiffs' motion for summary judgment, plaintiffs and their counsel did not file the complaint in this action until November 17, 1983, and the first amended complaint until on or about Decem-

ber 5, 1983, because the process of preparing plaintiffs' case was time-consuming and laborious. Having taken so much time and care in preparing your case, it is reasonable to assume that the requested information is already in your possession or is readily available.

Unlike plaintiffs, defendants have been under tight time constraints from the beginning of this litigation in responding to the complaint, to plaintiffs' requests for discovery and now to plaintiffs' voluminous motion for summary judgment. Thus, defendants have been deprived of the time necessary to adequately research and understand the context in which the issues of this litigation are raised, to prepare for trial or to prepare a fair record if this matter is determined through summary procedures. Defendants have not been involved in monitoring the activities of the political parties in California because their duties have not included this function. This fact is a basis for defendants' motion to dismiss. This fact also makes defendants dependent on the knowledge and records of persons outside of government to adequately defend against the issues raised by the complaint if, as appears to be a *fait accompli*, defendants are required to respond on the merits.

Defendants' counsel have devoted and are continuing to devote intensive efforts to the laborious and time-consuming process of identifying the persons outside of government who have the necessary knowledge and who are willing to provide information without the compulsion of judicial process which the court has acknowledged is not a practical alternative given the time-constraints involved in this litigation. The leads and information which defendants' counsel have acquired to date, though tentative and preliminary, indicate that the views expressed by plaintiffs are not representative of most members of their parties, are contrary to the actual positions of their parties and are deleterious to the interests of their parties.

This information if adequately developed and validated would have profound adverse effects both on plaintiffs'

standing to litigate any of the issues raised by the complaint and on plaintiffs' positions on the merits of these issues.

Inasmuch as the court has made a point of informing defendants that they have no assurance that they will have an opportunity to present evidence for introduction into the record of this litigation after final briefing of the pending motions are filed by mail on April 2, 1984, your timely response to defendants' request is of critical importance. Defendants have endeavored to get the information of the nature requested of you themselves but so far have been unable to secure almost all of it. Obviously, these requests are of necessity of a preliminary nature and in order for defendants to prepare a fair record in this litigation, much follow-up would be required.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

Geoffrey L. Graybill
Deputy Attorney General

GLG/lac

cc: Honorable Marilyn Hall Patel, Judge
U.S. District Court

Clerk, U.S. District Court for
the Northern District of California

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF JAMES FAY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, JAMES FAY, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a resident of Alameda County, California and was, from 1972 to 1976, an elected member of the Alameda County Democratic Central Committee. I am a registered Democrat and have been an active participant in the activities of the Democratic Party of California since 1971. In 1976, I was the Northern California manager of the Presidential campaign of Congressman Morris Udall. I am also a Professor of Political Science at California State University in Hayward.

2. I withdrew from the Alameda County Democratic Central Committee because, among other things, that Committee was prohibited by law from expressing my views, the views of my fellow Committee members, or the views of other party adherents regarding various candidates for partisan office in primary elections. I have been discouraged from seeking to rejoin the County Central Committee because, among other things, that Committee is prohibited by law from expressing its views regarding candidates for school, county, or city office.

3. As a voter and concerned citizen, when I evaluate candidates running for partisan office in primary elections or for school, county or city elections, I would like to know whether my County Central Committee would endorse, support, or oppose such candidates. Such an endorsement would tell me, as a Democrat, that the party finds that candidate best qualified and most representative of the Democratic Party's philosophy. Although the endorsement would not dictate how I ultimately vote, it would provide another helpful piece of information for me to evaluate when I go to the polls.

4. I would, therefore, like the Alameda County Democratic Central Committee to have the ability to endorse, support, or oppose candidates in primary and school, county, and city elections. I would encourage or contribute to this endorsement process if that process were permitted by law.

5. As an active political participant and a concerned voter, I am also distressed that the Democratic State Central Committee is unable to endorse candidates in statewide primary elections and is thus severely restricted

in its ability to vigorously engage in the political life of the state. Throughout our democratic nation and in many of our sister states, the primary function of political parties is to select nominees for office or to advise the public on candidate selection.

6. In California, I personally can and have considered the endorsements of business, labor, environmental, civic, social, and special interest groups before deciding who to support for statewide partisan office. However, I am deprived of the advice of the official voice of the Democratic Party in every statewide primary. Since many members of the Democratic State Central Committee have the opportunity personally to speak with and closely evaluate candidates for statewide office, an opportunity which I rarely have, I would appreciate their public evaluation, in the form of an endorsement, as one important piece of information in helping me to make a rational choice on how to vote in the primary.

7. It seems inconsistent for so many groups to be able to endorse candidates for statewide partisan office, including some organizations which pretend to speak for the Democratic Party, while the Party itself has no public voice to communicate with the citizenry regarding which individuals will assume crucial leadership roles in the Party, speak for the Party, help shape its policies, and lead it in the electoral struggle in the general election.

8. As an active member of the Democratic Party, I would like my party freed from the restrictions regulating its organizational structure as set forth in the Complaint in this case. A party should be free to conduct and arrange its internal affairs as it sees fit, without interference from the state.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Berkeley, California, this 2nd day of March, 1984.

/s/ James S. Fay
JAMES FAY

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF DONALD FRASER IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, DONALD FRASER, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge and if called as a witness could testify competently thereto. I am currently the Mayor of Minneapolis, Minnesota. I was elected to this office in 1980. Prior to that time, I represented Minnesota's 5th District in the United States House of Representatives from 1963 to 1978 and served as a member of the Minnesota Senate from 1954 to 1962. While in Congress, I was a member of the House International Relations Committee and the House Budget Committee. I have long been active

in Minnesota and national politics, serving as a Minnesota delegate to the Democratic National Convention in 1960, as the chairman of Minnesota Citizens for Kennedy in 1960, as a member of the Democratic National Convention Rules Committee in 1972 and 1976, as the national chairman of Americans for Democratic Action from 1973 to 1976, and as the national chairman of the Democratic Conference from 1976 to the present.

2. I am a member of the Minnesota Democratic-Farmer-Labor Party (DFL). The DFL structures itself as follows. The party holds local precinct caucuses, approximately 3000 of them, on the same date throughout the state. Approximately 60,000 to 100,000 people regularly participate in these precinct caucuses. Each precinct caucus elects delegates to the next tier of party government. In the rural areas, the next tier is a county convention. In urban areas, the next tier is the state senatorial district. Delegates to this second tier meet three or four weeks after the precinct caucuses, and elect delegates to the state convention.

3. Party endorsements serve an educational function. Party activists have access to information about the candidates which should be communicated to the public. Party conventions are able to consider the positions of the candidates on the issues carefully and thoughtfully and are able to assess the quality of their character. Endorsements allow the party to advise the voters, who normally lack the time and resources to make such detailed evaluations, how candidates fare against each other when these factors are weighed and considered.

4. Primary endorsements allow those who would otherwise not be serious contenders to be considered for

public office. They enable candidates who are not wealthy or who are not well known to be recognized and recruited for public office.

5. Party endorsements also allow the parties to hold elective officials accountable to the voters. The party organizations monitor the elected officials and ensure that they address the needs of the voters and the members of the political party that supported them.

6. The DFL state convention has regularly endorsed candidates running in the state's primaries since the party's inception shortly after World War II, including candidates seeking the offices of United States Senator, Governor, Attorney General, State Treasurer, and State Auditor. On the local level, the second tier conventions regularly endorse candidates running for the State Legislature and for the United States House of Representatives.

7. The ability of parties to endorse primary candidates in Minnesota has enabled the parties to serve all these functions. Because of the endorsement process, Minnesota consistently presents to the voters a high quality of candidates at both the state and the national level.

8. In Minnesota, the parties are also allowed to endorse in nonpartisan elections. Both the DFL and the Republican Party regularly endorse in these races.

9. Endorsements in nonpartisan races are even more important than endorsements in primary races. Officials running in local races are frequently less well known than officials running in the partisan campaigns. The guidance of the party and the information that the endorse-

ment provides is thus far more important in ensuring an informed choice by the voters.

10. Voters do not blindly follow party endorsements. In 1982, for example, the gubernatorial endorsees of both the Republican and DFL parties lost in the primaries. Rudy Perpich defeated the DFL endorsed candidate, Warren Spannaus, and Wheelock Whitney beat the Republican endorsee, Lou Wangberg. As a further example, I was endorsed by the DFL for the United States Senate race in 1978, but lost to Bob Short in the primary. Thus, a party endorsement does not ensure the endorsee will win in the primary election.

11. The state has no business regulating the internal affairs of the party. When the state interferes, it impairs the ability of the party to function and hampers its ability to serve the needs of party members. Several years ago, for example, the state of Minnesota imposed upon the parties a primary system for the selection of delegates to the national conventions. The DFL and Republican parties found this process distasteful since it impaired the parties' ability to select convention delegates in the manner they thought best. The primary law was later repealed, returning us to the caucus and convention system that we presently use.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Minneapolis, Minnesota, this 1 day of March, 1984.

/s/ Mayor Donald Fraser
MAYOR DONALD FRASER

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF MARY GINGELL IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, MARY GINGELL, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a member of the State Central Committee of the Libertarian Party of California and serve on the Executive Committee of that body. I have been a member of the State Central Committee since November 1981 and served as Chair from August 1982 to February 1984. I have been an active participant in the activities of the Libertarian Party of California since June 1981.

3. The organizations of the Libertarian Party have endorsed candidates running for school, county, or city offices in the past, including candidates running for Mayor of San Francisco, Mayor of Los Angeles, San Francisco County Board of Supervisors, Santa Cruz County Board of Supervisors, Palo Alto School Board, and Santa Barbara School Board.

4. The ability of the Libertarian Party organization to endorse candidates is crucial. Ours is a small relatively young party. We must be free to recruit and train strong, capable candidates in primary races if we are to develop as a party. Only by being free to support primary candidates for partisan office can we hope to accomplish this objective. In school, county, and city elections, it is important for our voice to be heard, as our opinions are not being expressed by other unofficial organizations. If we are silenced, then the electorate is deprived of the Libertarian point of view.

5. The Libertarian Party of California was not formed until 1972. In 1980 we became a qualified party, governed by the provisions of the California Elections Code and entitled to participate in primary elections. Before 1980, our party had organized itself by regions, not counties. When we became a qualified party, however, we were forced by the provisions of the Elections Code to change our structure and our internal party rules, including a change to an organization based on counties. These provisions stated that we had to abide by the detailed statutory provisions governing the Republican Party, the Democratic Party, the American Independent Party, or the Peace and Freedom Party, all of which have goals and

concerns different from those of the Libertarian Party. Although we selected the rules of the Peace and Freedom Party as the best alternative, we were still burdened by having to establish a totally new statewide organization that differed from our preferred and natural party structure.

6. The Libertarian Party has unsuccessfully tried to persuade the State Legislature to enact legislation specifically tailored to our organizational needs so that we would not have to operate under the burdensome rules governing the Peace and Freedom Party. In 1981, a bill that would have accomplished that goal was introduced by Assemblyman Robert Naylor. The Assembly Elections Committee considered this bill, but did not pass it, illustrating the danger of leaving internal affairs.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Costa Mesa, California, this 29 day of February, 1984.

/s/ Mary T. Gingell
MARY GINGELL

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF MILLER HUDSON IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, MILLER HUDSON, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Denver Democratic Party. I was elected to this post in March 1983. Prior to becoming Chair, I served two terms in the Colorado State Legislature from 1979 to 1983. I have been active in the Democratic Party of Colorado since 1973.

2. In Colorado, the lowest organizational level of the Democratic Party is the precinct caucus, which is structured so that there are approximately 500 voters per precinct. The precinct caucuses meet and elect the representatives that attend the county assemblies. The county assemblies then meet and elect the approximately 3000 delegates to the state convention.

3. In Denver, all municipal officials are elected on a nonpartisan ballot that does not indicate the candidate's party affiliation. In 1983, the Denver Democratic Central Committee decided to support candidates in the race for the two contested nonpartisan posts on the Denver Election Commission. The party thus held a convention at which the delegates conducted a preference poll. The two top vote getters received the support of the party. The Denver Democratic Party held a similar convention and conducted a similar preference poll in the 1975 election for city council.

4. Both the county and state conventions regularly consider and vote on all the candiadtes running in primary races. Votes are thus taken in regard to the entire range of state attorney general, and county commissioners. At the conventions, a single ballot is taken for each such office. Candidates who receive over 20 percent on this ballot are automatically listed on the primary ballot in the order they placed in the convention voting. Other candidates have access to the ballot only by petition.

5. The ability of the party to express its support for candidates contributes to the strength of the Democratic Party in Colorado. The party would be much weaker if

it were not allowed to express its preference for the candidates.

6. Because the candidates realize that support from the party is helpful, the party is able to fulfill its function of holding elected officials accountable to the people.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Denver, Colorado, this 27th day of February 27, 1984.

/s/ Miller Hudson

State of Colorado
County of Arapahoe
The foregoing instrument was acknowledged before me this 27th day of February, 1984 by Miller Hudson.
My commisison expires: 4/4/84

/s/ Carol A. Wyatt
Notary Public

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF MALCOLM E. JEWELL IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, MALCOLM E. JEWELL, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a Professor of Political Science at the University of Kentucky. I have taught at the University of Kentucky since 1958, and chaired the Political Science department from 1969 to 1973. My primary teaching fields are American political parties at the national and state level; and the legislative process at the national, state, and cross-national level.

2. I received my Bachelor of Arts degree in Political Science, *magna cum laude* from Harvard University in 1949, my Master of Arts degree in Political Scicence from Columbia University in 1950, and my Ph.D. degree in Political Science from Pennsylvania State University in 1958.

3. I have held the position of President Elect and President of the Midwest Political Science Association (1978-80), President Elect and President of the Southern Political Science Assocation (1979-81) Chairman of the American Political Science Association's Committee of Department Chairman (1971-73), and member of the American Political Science Association's Council and Administrative Committee (1979-81).

4. I am and have been an editor of the Legislative Studies Quarterly, a journal I helped establish, since 1976. I have authored several books, including AMERICAN STATE POLITICAL PARTIES AND ELECTIONS (1978) with co-author Professor David Olson, and have contributed chapters to other works, including *The Selection Process and the Presidency,* in THE POST-IMPERIAL PRESIDENCY (V. David ed. 1980) and *Participation in Southern Primaries* in PARTY POLITICS IN THE SOUTH (R. Steed, L. Moreland, T. Baker eds. 1980). In addition, I have published a number of articles concerning state party systems, including *The 1978 Elections and American State Party Systems,* Publius 191 (Winter 1979); *Voting Turnout in State Gubernatorial Primaries,* 30 Western Political Quarterly 236 (June 1977); and *Local Systems of Representation: Political Consequences and Judicial Choices,* 36 George Washington Law Review 790 (1968).

5. A true and correct copy of my complete curriculum vitae is appended to this declaration as Exhibit A.

6. I am currently preparing to publish a new book, entitled PARTIES AND PRIMARIES: NOMINATING STATE GOVERNORS, the research for which underlies the factual material set forth in this declaration. My research focused on the party endorsement and selection of candidates for governor.

7. In seven of the states I examined while doing research for my new book, a gubernatorial candidate's access to the primary ballot is conditioned, in varying degrees and pursuant to state law, upon official party support or endorsement at the state convention. These states and their provisions follow:

a. Utah: If a candidate receives over 70% on a convention ballot, that candidate will become the party's nominee, and no primary will be held. If no candidate receives over 70%, the top two vote getters will vie for the party's nomination in the primary. No other candidates may qualify for the primary ballot.

b. Connecticut: The party endorsee will automatically become the party's nominee in the general election unless another candidate receives over 20% of the vote on any convention ballot. If some one receives over 20%, he or she has the option to request that a primary be held, allowing that individual to challenge the party endorsee.

c. Rhode Island: The party endorsee qualifies for the primary ballot and is listed first. Other candidates must qualify by petition.

d. North Dakota: The party endorsee qualifies for the primary ballot. Other candidates must qualify by petition.

e. New York: Candidates other than the endorsee qualify for the primary ballot by getting 25% on any ballot at the state convention, or by petition.

f. Colorado: Candidates qualify for the primary ballot by getting 20% on the single ballot taken at the state convention, or by petition. The candidates are listed on the primary ballot in the order they placed at the convention.

g. New Mexico: Candidates qualify for the primary ballot by getting 20% on the single ballot taken at the state convention, or by petition. Candidates may qualify by petition only if they have sought endorsement at the state convention.

8. In Massachusetts, the charter of the state Democratic Party provides that only gubernatorial candidates who get 15% of the vote on any ballot at the state convention qualify for the primary ballot.

9. State political parties also endorse candidates in other states, such as Minnesota, Illinois, Delaware, and Wisconsin.

10. I studied in detail the 1982 gubernatorial endorsement process in five states: Connecticut, New Mexico, New York, Massachusetts, and Minnesota. I examined ten state conventions and ten primary contests, one for each of the two major parties in the five states. I found that four of the ten endorsees lost the primary election and that four

other endorsees benefitted little from the party endorsements.

11. In the 1982 New York Democratic gubernatorial contest, Mayor Edward Koch of New York won his party's endorsement, but lost the primary to Mario Cuomo. This was the second time in the last four Democratic gubernatorial contests that the endorsee had lost the primary.

12. In the 1982 Massachusetts Republican gubernatorial contest, John Lakian won his party's endorsement but lost in the primary election. This was the second consecutive gubernatorial contest in which the endorsee had lost the Republican Party primary.

13. In both Minnesota 1982 gubernatorial primaries, the parties' endorsees, Warren Spannaus and Lou Wangberg, lost in the primary elections.

14. Little evidence suggests that the party's endorsement significantly contributed to the victories of the Democratic or Republican gubernatorial endorsees in the 1982 New Mexico primaries. A statewide survey of registered voters was taken by Professor F. Chris Garcia a few weeks before the primaries. At my request, Professor Garcia included in that survey a question asking the respondents which candidate they expected to vote for and the reasons for that choice. Not a single voter in either party mentioned the party's endorsement as a reason for their candidate preference.

15. In the 1982 Massachusetts Democratic gubernatorial contest, Michael Dukakis won both the endorsement and the primary over the incumbent governor, Edward King. In a survey that I conducted ten days following the primary, 92% of those who knew that one of the two

candidates had received the Democratic Party's endorsement said that the endorsement had made no difference in the way they had voted.

16. In the 1982 New York Republican gubernatorial contest, Lewis Lehrman won both the endorsement and the primary. The endorsement, however, was not an important factor in his primary victory. The endorsement merely reflected the party's belief that he was going to win the primary.

17. In my opinion, based upon my knowledge and experience, and upon my study of state endorsement practices, no evidence supports the hypothesis that party endorsements have an undue or dangerous impact on the voter. Voters can and do exercise their independent judgment in casting their ballots.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Lexington, Kentucky, this 27th day of February, 1984.

/s/ Malcolm E. Jewell
PROFESSOR MALCOLM E. JEWELL

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

N. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF EUGENE LEE IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, EUGENE LEE, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge and if called as a witness could testify competently thereto. I am presently a Professor of Political Science and the Director of the Institute of Governmental Studies at the University of California, Berkeley. I have taught at the University of California, Berkeley, since 1955. My primary teaching field is state and local government and politics.

2. I received my Bachelor of Arts degree in political science from the University of California, Los Angeles in 1946, and my Master of Arts degree and Ph.D. in political science from the University of California, Berkeley in 1950 and 1958, respectively.

3. I was the Academic Assistant to the President of the University from 1973 to 1976 and a Vice President/ Executive Assistant at the University from 1965 to 1967.

4. I served as President of the Northern California Political Science Association from 1965 to 1966. I am currently a member of the National Academy of Public Administration and a member of the Board of Trustees for the California Tax Foundation, having assumed both positions in 1980. I also served as a staff consultant to the California Congressional Delegation in 1979. I am a member of the Board of Directors for the California Center for Research & Education in Government (publishers of the California Journal) and chaired that Board from 1972 to 1982.

6. I have published numerous books and monographs in my field, including THE POLITICS OF NON-PARTISANSHIP: A STUDY OF CALIFORNIA CITY ELECTIONS (1960); CALIFORNIA VOTES: AN ANALYSIS OF REGISTRATION AND VOTING, 1928 60 (1963); CALIFORNIA VOTES, 1962-1972 (1974) with co-author Bruce Keith; THE CHALLENGE OF CALIFORNIA (1st ed. edited with Willis Hawley, 1970) (2d ed. edited with Larry L. Berg, 1976). I have also authored numerous articles, including *California Primary Politics,* California Data Brief (May 1978); *San Francisco's District Election System Alters Electoral Politics,* National Civic Review (April 1978); *Voting Turnout in American Cities,* American Political Science Review (Sept. 1968); and four articles reviewing the California elections of 1960, 1962, 1964, and 1966, published in Western Political Quarterly and Public Affairs Report.

7. A true and correct copy of my complete biographical statement is appended to this declaration as Exhibit A.

8. Political party organizations serve many essential functions in our democracy. For example, they develop and advance political programs and ideas. They play a key role in educating the citizenry as to the issues and candidates of the day and in promoting and facilitating participation at the polls. They recruit and train candidates for public office. They provide funding and manpower for campaigns. And they are one of the few organizations designed to hold elected officials accountable for their acts.

9. A political party unable to endorse candidates is, by definition, a weak party. Indeed, influencing if not controlling the choice of candidates who carry the party label is frequently cited as one of the defining characteristics of a political party. Prohibiting party endorsements, therefore, strikes at the very heart of the political party organizations making it less able to carry out the functions, described above, that only it can perform.

10. California political parties are weak organizations. One of the primary reasons for their weakness is the inability of the party organization to endorse candidates for political office. If given the power to endorse, they would be better able to carry out the vital functions noted above. This does not mean, however, that they would dominate the electoral process. Merely allowing official party committees to voice their opinions or publicize their political judgments is not the same thing as giving party organizations control over a candidate's access to the ballot.

11. The endorsement of a political party organization is quite valuable in and of itself. Such an endorsement

provides to the voters one more vital piece of information that the voter can evaluate in making a selection at the polls. In essence, an endorsement serves an educational function, indicating to the voter that like-minded people find the candidate acceptable. The endorsement of the party is particularly useful since it reflects the opinions of the person most active and most interested in the programs and activities of the political party. A voter who identifies with the beliefs of this party and is interested in the health of the organization and the strength of its programs will be best served if he or she knows the opinions of the party leadership as to a particular candidate. In that sense, a political party endorsement is far more valuable and provides far more information to the voter than the endorsement of any individual or single issue group.

12. An endorsement of a party organization will, of course, be only one of many endorsements made by, among others, newspapers, political action committees, political clubs, labor unions, candidate campaign committees, single issue groups, and even friends and neighbors. It is anomalous to allow endorsements by such groups while prohibiting endorsements by those most interested in the health and well being of the party and in its success at the general election.

13. In my study of party endorsement practices, I found that in many cases, party organizations will not endorse any candidate. In other cases, they will endorse several candidates competing for a contested position.

14. Party endorsements will not automatically determine the outcome of an election. A political party organization will merely be adding its one voice to the many other voices that are already exercising their constitu-

tional freedoms. In fact, I am aware of no evidence that suggests that endorsements issued by California political parties prior to 1980 had any negative impact on the electoral process.

15. A party endorsement is not the same thing as a party nomination. Candidates are nominated to primary and nonpartisan ballots by petition. An endorsement by a party would not change that system. Rather, an endorsement would merely reflect the opinion of the party leadership, an opinion to be considered and evaluated by the voter and to which voters are entitled.

16. In terms of the definition used by political scientists, it is not the case that party endorsements will turn a "nonpartisan" contest into a "partisan" contest. The operational definition of a partisan election is one in which a candidate's party affiliation appears on the ballot. This, of course, would not be the case if parties were merely allowed to issue endorsements.

17. I am aware of no evidence that suggests that giving political parties the right to endorse candidates for school, county, or city offices will subvert the will of the party membership. Indeed, the educational nature of endorsements will allow party members to express their will more intelligently when they cast their ballots.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Berkeley, California, this 28th day of February, 1984.

/s/ Eugene C. Lee
PROFESSOR EUGENE LEE

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF KAREN MARCHIORO IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, KAREN MARCHIORO, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge and if called as a witness could testify competently thereto. I am the current Chairperson of the Democratic Party of Washington. I was elected Chair in 1981. From 1974 to 1981 I was Chairperson of the King County Democratic Central Committee. King county is the most populous county in the state, encompassing the city of Seattle. For the three years before 1974, I had held other local party offices.

2. The Democratic Party of Washington is organized as follows: the Democratic State Convention is the governing body of the party. It delegates the authority to conduct the business of the party to two State Committees —the State Statutory Committee and the State Central Committee. The Statutory Commitee is given only the four powers enumerated in the Washington statutes: calling conventions, providing for the election of delegates to the national convention, filling vacancies on the state and federal tickets, and providing for the nomination of presidential electors. The State Central Committee, pursuant to the Supreme Court case of *Marchioro v. Chaney*, 442 U.S. 191 (1979) in which I was a plaintiff, has been given all other powers. This Central Committee consists of two individuals from each county and two individuals from each legislative district. The County Central Committees and Legislative District Committees, the lowest organizational levels of the party, are elected by Washington voters at the general election on a precinct by precinct basis.

3. The King County Central Committee has endorsed primary candidates. Candidates who have received these endorsements include candidates for the offices of United States Senate and House of Representatives, Governor, State Legislature, and County Council. The King County Central Committee and other County Central Committees, however, frequently refrain from endorsing these candidates to avoid creating unnecessary friction within the party.

4. The King County Central Commitee and other County Central Committees regularly endorse candidates

for nonpartisan office, including candidates for mayor, city council, and freeholder (elected to amend and adopt city charters). Typically, in early August or late July the party will send a questionnaire and an invitation to be interviewed to all the candidates running for selected nonpartisan offices. After carefully evaluating the returned questionnaires and the interviews, the party issues its endorsement.

5. Party endorsements in Washington serve an educational function. In many elections, particularly in local nonpartisan elections, voters are not very familiar with the candidates running for office. The endorsement of their party is thus another valuable piece of information which voters can weigh in their minds when they cast their ballots.

6. It is crucial that a party be allowed the right to structure itself as it wishes. To protect that constitutional right, other party members of the Democratic Party of Washington and I brought suit to invalidate a statute prescribing the composition of our party's State Central Committee. The challenged statute provided that this Committee consist of two representatives from each county. The party and the plaintiffs felt that the Committee would best represent the members of the Party if it also included one representative from each state legislative district. Pursuant to the decision in *Marchioro v. Chaney*, 442 U.S. 191 (1979), the Party was given the freedom to establish another party committee, composed as the party desired, to handle all internal party affairs. The Party formed this committee, a result which satisfied the important need of the Party to have representation from the legislative district level in its central policy-making body.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Seattle, Washington, this 28th day of February, 1984.

/s/ Karen Marchioro
KAREN MARCHIORO

SUBSCRIBED AND SWORN TO before me this 28th day of February, 1984.

/s/ Carey J. Richmond
NOTARY PUBLIC in and for the State of Washington, residing at Seattle.

JAMES J. BROSNAHAN
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF AUSTIN RANNEY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, AUSTIN RANNEY, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am currently a Professorial Lecturer at Georgetown University, Resident Scholar at the American Enterprise Institute for Public Policy Research, and a Co-Director of the Program In Political and Social Processes, also at the American Enterprise Institute for Public Policy Research. In my professional career, I have held the following academic positions: Instructor in Political Science, Yale University (1945-47); Instructor of Political Science, University of Illinois (1947-51); Assis-

tant Professor of Political Science, University of Illinois (1951-57); Associate Professor of Political Science, University of Illinois (1957-59); Professor of Political Science, University of Illinois (1959-63); Associate Dean of the Graduate College, University of Illinois (1958-61); Professor of Political Science, University of Wisconsin-Madison (1963-76); and visiting Professor of Political Science, University of California, Berkeley (1975-76). My area of professional expertise is political parties and elections.

2. I received my Bachelor of Science degree in Political Science from Northwestern University in 1941, my Master of Arts degree in Political Science from the University of Oregon in 1943, and my Ph.D degree in Political Science from Yale University in 1948.

3. I have been active in professional associations within my field. I served as President of the American Political Science Association (1974-75); Member of the Council, American Political Science Association (1956-58, 1964-71); Member of the Executive Committee, American Political Science Association (1974-75); Member of the of the Task Force on the Future of the American Political Science Association (1977-80); Member of the Council, International Political Science Association (1967-73); Fellow of the American Academy of Arts and Sciences (1964-present); and Vice President for the Social Arts and Sciences (1981-present).

4. I was managing editor of the *American Political Science Review* (1965-71). I have authored several books, including THE DOCTRINE OF RESPONSIBLE PARTY GOVERNMENT (1954, 1962); DEMOCRACY IN THE

AMERICAN PARTY SYSTEM (1974) with co-author Willmoore Kenedal; GOVERNING: AN INTRODUCTION TO POLITICAL SCIENCE (1971, 1975, 1982); and CURING THE MISCHIEFS OF FACTION: PARTY REFORM IN AMERICA (1975). In addition, I have published numerous articles in various professional journals, including *American Political Science Review American Politics Quarterly, Journal of Politics, Political Scence Quarterly, Public Opinion, Revue Francaise De Science Politique,* and the *Yale Review.*

5. A true and correct copy of my complete curriculum vitae is appended to this declaration as Exhibit A.

6. Parties are an essential element of a strong democracy. The need for political parties is evidenced by their existence in every democracy in the world. A political party is the only organization large enough, open enough, and public enough to give order and direction to a democracy's political life.

7. Only strong political parties are able to hold the government accountable to the people. The parties are thus an essential link between the citizenry and elected officials.

8. Political parties provide programatic and ideological leadership to party members and to other voters. They are one of the few organizations that can advance broad proposals for change and formulate specific programs to implement these proposals.

9. Without the ability to endorse candidates, parties are weakened and become unable to carry out their vital functions. They become powerless entities, incapable of

holding public officials accountable to the citizenry or to the party platform they are pledged to support.

10. In almost every other democratic country, such as Great Britain, Canda, Switzerland and France, parties serve the vital functions enumerated above. In the United States, excessive state regulation has hindered political parties in their attempt to serve those important functions.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Washington, D.C. this 28th day of February, 1984.

/s/ Austin Ranney
Professor Austin Ranney

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF DAVID E. STURROCK IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, DAVID E. STURROCK, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a member of both the Santa Clara County Republican Central Committee (the "County Central Committee") and the Republican State Central Committee. I have been either a member or an alternate of the County Central Committee since 1977 and have been a member or associate member of the State Central Committee since 1975. I am a registered Republican and have been an active participant in the activities of the Republican Party of California since 1974.

2. I would like the County Central Committee to be able to endorse, support, or oppose candidates in direct party primary elections, including candidates running for United States House of Representatives, State Senate, and State Assembly in 1984 and 1986. I would also like the State Central Committee to be able to endorse, support or oppose candidates in direct party primary elections, including candidates running for Governor, Lieutenant Governor, Treasurer, Controller, Secretary of State, and Attorney General. I would encourage and contribute to this endorsement process if that process were not prohibited by the existence of section 11702 of the Elections Code and the threat of enforcement of this provision by the defendants.

3. I would also like the County Central Committee to endorse, support, or oppose candidates for school, county, and city offices, including candidates running for the County Board of Supervisors, city councils and school boards in 1984, 1985, and 1986, and for the County Board of Supervisors in 1984 and 1986, and would encourage and contribute to this endorsement process if that process were not prohibited by section 6, article II of the California Constitution and section 37 of the Elections Code and the threat of enforcement of these provisions by the defendants.

4. I would have favored the County Central Committee endorsing primary candidates for nomination in past State Assembly races. I would also have favored the State Central Committee endorsing primary candidates for nominaiton in the 1978 State Controller race, and the 1982 State Treasurer and State Controller contests. Dixon

Arnett was a candidate in the 1978 State Controller primary election. Of all the candidates running for nomination that year, I believed that Mr. Arnett would have been the strongest opponent of the incumbent, Kenneth Cory. Another candidate, however, won the election, largely on the basis of an endorsement from Howard Jarvis. The State Central Committee, in contrast, could not endorse Mr. Arnett, and thus was unable to support the candidate that I believed would have been the best for the Republican Party.

5. As for school, county, and city elections, our County Central Committee endorsed candidates for County Board of Supervisors, Cupertino City Council, and Saratoga City Council in 1976, candidates for Mayor of Santa Clara and Santa Clara City Council in 1977, candidates for County Assessor and County Sheriff in 1978, and candidates for Mayor of Sunnyvale and Sunnyvale City Council in 1979, among other races throughout this period. In addition, I would have liked the County Central Committee to endorse candidates for Board of Supervisors and San Jose City Council in 1982. I would also like the County Central Committee to endorse candidates running for San Jose City Council and County Board of Supervisors in the upcoming June election.

6. Numerous unofficial groups regularly endorse candidates in primary and nonpartisan elections in Santa Clara County. These groups include (a) Republican Clubs, such as the local chapters of the California Republican Assembly, the California Republican League, the United Republicans of California, and the California College Republicans; (b) labor groups and unions, such as the

Building and Construction Trade Union, the California Teachers Association, the United Farm Workers, the AFL-CIO, and the California State Employees Association; (c) special interest groups, such as the San Jose Real Estate Board, the National Women's Political Caucus, the Police Officers Research Association of California, the Gun Owners of California, and the Law and Order Campaign Committee; and (d) newspapers such as the San Jose Mercury News and the Peninsula Times Tribune.

7. In many school, county, and city elections, the race is between candidates whom interested voters could easily identify as Republican or Democrat. The San Jose Mercury News, for example, regularly lists and offers fairly detailed information about most candidates for nonpartisan office. In these articles, the newspaper indicates the candidates' party affiliation.

8. I became a member of the County Central Committee and the State Central Committee because I shared the political beliefs of the other members of those organizations. I thought that these Committees could advance these shared political beliefs far more effectively than I could as a single individual. My individual endorsement is worth far less than the collective endorsement of the Committees as whole. Since the Committees cannot endorse in primary or nonpartisan campaigns, our whole purpose in associating together has been frustrated.

9. As a member of the County Central Committee and the State Central Committee, I would favor the adoption of a method of selecting State Central Committee members that is different from the method imposed by sections 9160, 9160.5, 9161, 9161.5, 9162, 9163, and 9164 of

the Elections Code. Currently, about three-fourths of the approximately 1200 members of the State Central Committee are individual nominees for partisan office (including individuals who lost in the general election) or their appointees. The remaining members are made up of the County Central Committees' chairs and their appointees. The minimal role of the County Central Committees under this state-imposed structure is disproportionate to their importance within the Party. Nominees, particularly losing nominees, are individuals who come and go. In contrast, the County Central Committees are ongoing organizations composed of the elected representatives of the Party membership. I would favor the adoption of rules that would give broader representation to the County Central Committees on the State Central Committee.

10. By regulating the organizational structure of this Party, the State is making an unreasonable and unwarranted intrusion into the Party's internal affairs. I would favor the Party being free to modify as it sees fit the rules regulating the time and place of its official Committee meetings, including those rules contained in section 9210 of the Elections Code and also those contained in sections 9420 and 9421 of the Elections Code. We should be allowed to meet in the place and at the time that we deem best suited for our situation.

11. Finally, I would favor giving the State Central Committee freedom to set its own dues. To my knowledge, no other private organization, such as the AFL-CIO is told what dues it can levy.

12. Neither I, nor the County Central Committee, nor the State Central Committee has sought to disobey the

rules mentioned in paragraphs 9 to 11 because of their existence and the threat of their enforcement by the defendants.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at San Jose, California, this 29th day of February, 1984.

/s/ David E. Sturrock
DAVID E. STURROCK

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NO. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF
HUGH BONE IN SUPPORT
OF PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, HUGH BONE, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge and if called as a witness could testify competently thereto. From 1948 to 1979 I was a Professor of Political Science at the University of Washington. I was Chair of the Political Science Department from 1959 to 1968. Since 1979, I have been a Professor Emeritus at the University of Washington. Prior to joining the faculty at the University of Washington, I was an Instructor and Assistant Professor at the University of Maryland from 1937 to 1942, an Assistant Professor at

Queens College, New York City from 1942 to 1948, and Professor at the University of Washington from 1948 to 1979. My field of expertise is American politics and political parties.

2. I received my Bachelor of Arts degree in Social Sciences from North Central College in 1931, my Master of Arts degree in Political Science from the University of Wisconsin in 1935, and my Ph.D. in Political Science from Northwestern University in 1937.

3. I was a member of the Executive Council of the American Political Science Association from 1950 to 1952, President of the Pacific Northwest Political Science Association from 1959 to 1960, and President of the Western Political Science Association from 1961 to 1962.

4. I have published numerous books on the subjects of political parties and Washington state politics, including POLITICS AND VOTERS (5th ed. 1981); AMERICAN GOVERNMENT: DEMOCRACY AND LIBERTY IN BALANCE (1976) (co-author with R. Silva, E. Keynes, and D. Adamany); POLITICS OF THE AMERICAN WEST (1970); and WASHINGTON POLITICS (1960) (co-author with D Ogden). I have also authored many articles in this field, the articles appearing in such periodicals as American Political Science Review, National Municipal Review, Law and Contemporary Problems, and Western Political Quarterly.

5. A true and correct copy of my *Curriculum Vitae* is appended hereto as Exhibit A.

6. The official political party organizations in King County, Washington, have endorsed and do endorse candidates in primary elections.

7. These and other party endorsements are vital political tools. They inform the voters that those most active in and involved with the party find a particular candidate's positions compatible with those generally held by party members. Moreover, taking away the ability to endorse or support candidates would weaken Washington political parties. Without endorsement powers, for example, the parties would find it difficult to hold elected officials accountable for their acts in office. Nor would they be able effectively to develop and advance political programs and governmental policies.

8. It is very important for the parties to control their own internal affairs. Frequently, the state is unable to anticipate or provide for a party's particular needs. In Washington, for example, state law had provided that the State Central Committees should be composed of one man and woman from each county in the state. This structure was unsuitable for the parties because it gave King County, the most populous in Washington, the same representation as the most sparsely populated county in the state. Because of a Washington Supreme Court decision, however, the parties are now free to establish their official party structure according to proportional representation, so that their members are more fairly represented in the party's central policy-making body.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Seattle, Washington, this 27th day of February, 1984.

/s/ Professor Hugh Bone
PROFESSOR HUGH BONE

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
NO. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF
JAMES MacGREGOR BURNS
IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, JAMES MacGREGOR BURNS, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a Professor of Political Science at Williams College. I have taught at Williams College since 1941, and became a Professor in 1953. My primary field of expertise is American party politics.

2. I received my Bachelor of Arts degree in Liberal Arts from Williams College in 1939. I received both my Master of Arts degree and Ph.D. in Government from Harvard University in 1947. I also completed a course of

postgraduate studies at the London School of Economics in 1949.

3. I served as President of the American Political Science Association from 1975 to 1976, and as President of the New England Political Science Association from 1960 to 1961.

4. I have written a number of books about political parties and the political process in America, including VINEYARD OF LIBERTY (1982); LEADERSHIP (1978); EDWARD KENNEDY AND THE CAMELOT LEGACY (1976); UNCOMMON SENSE (1972); ROOSEVELT: THE SOLDIER OF FREEDOM (1970); PRESIDENTIAL GOVERNMENT: THE CRUCIBLE OF LEADERSHIP (1966); THE DEADLOCK OF DEMOCRACY: FOUR-PARTY POLITICS IN AMERICA (1963); ROOSEVELT: THE LION AND THE FOX (1956); and CONGRESS ON TRIAL (1940). I am also the author (with Jack W. Peltason and Thomas E. Cronin) of an American government text widely used since 1951, GOVERNMENT BY THE PEOPLE. In addition, I have published numerous articles and reviews in *Harpers, The Atlantic, Life, Newsweek, The New York Times Magazine* and its *Book Review*, among others. In 1971, I won the Pulitzer Prize in History and the National Book Award.

5. I have been active in the Massachusetts Democratic Party since 1936. I was the Democratic nominee for Congress, 1st Congressional District of Massachusetts, in 1958. In 1952, 1956, 1960, and 1964, I was a Massachusetts delegate to the Democratic National Convention. I also served as a delegate to the National Charter Commission

of the Democratic Party in 1974 and to the Charter Commission of the Massachusetts Democratic Party from 1977 to 1979.

6. For many years the American constitutional system and our political party system operated in a creative balance that brought together the dynamism of popular participation and the constraints of the constitutional system. The grave weakening of the political parties has threatened to end this balance, and create in its stead a highly personalistic system that caters to irresponsible political campaigning and public service. Without the coordinating and unifying role of political parties, our system will tend to degenerate into a jumble of self-seeking candidates and powerful groups, which, combined with the power of the media, will lead to irresponsible, ineffective, and expensive government in the years to come.

7. Historically, parties were the great incubators of democracy, providing a place where citizens would gather to discuss the important issues of the day and to select candidates for office. There is a great need for parties to serve that same function today. The majority of people in this country still need a meeting place of democracy, a place where persons from all walks of life can seek common counsel. Parties are one of the few organizations that can serve this need and provide a link between the individual citizen and the government.

8. In Massachusetts, parties are regulated much less severely than they are in California. They are, for example, allowed to endorse candidates running in primaries. The parties are, therefore, better able to serve as the citizens' gathering place. Party caucuses are regularly held throughout the state. In these caucuses, neighbors

meet in small groups to discuss the questions facing the party. The party becomes, in essence, a civic enterprise. On a statewide level, up to several hundred thousand people will participate in these caucuses.

9. Parties also serve the very important function of recruiting capable candidates for public office. No other body has the breadth, scope, or ability consistently to find and persuade qualified individuals to run for the thousands of offices up for election each year. This activity is particularly important in regard to local posts, which frequently serve as entry level positions for persons destined for higher office.

10. Party endorsements in nonpartisan and primary elections serve other vital functions. They educate the public by informing them that the endorsed candidate believes in the program and shares the goals of the political party. In a slightly different sense, endorsements are a very useful guide to voters. When it endorses a candidate, a political party indicates to the members of that party that a group of like-minded people has carefully considered the candidate and found him or her acceptable. This function is especially crucial in the many instances where the voter cannot know enough about candidates to make an informed, independent judgment. The party endorsement, issued by individuals whom the voter trusts and with whom the voter shares political beliefs, is thus one of the surest and quickest guides available to the public.

11. Party endorsements are also important in giving parties some influence in the selection of the candidates who will be the eventual nominees of their party. They provide a means of holding their leaders accountable to the party program and ultimately to the citizens whom they represent.

12. The collective endorsements of the political party organizations are far more dependable and valuable to the voter than the endorsements of individual party leaders. An individual endorsement may be biased or reflect a view not consistent with that of the majority of the party. A collective endorsement, on the other hand, will more likely reflect the majority view of the party membership, and will thus serve as a more valuable guide to the voter.

13. Prohibiting a political party from endorsing in primary and nonpartisan races greatly weakens a party. Deprived of the ability to participate in these crucial elections, the party will have lost much of its reason for existing. Potential members will see little purpose in joining an organization that cannot effect their political beliefs. In short, taking away the endorsement power strikes at the very core of the party. So weakened, the political parties are unable to carry out the vital functions enumerated above.

14. Parties should have the ability to regulate their own internal organization. Without the freedom to organize themselves according to their needs, they are hampered in serving the important functions that parties must serve, including acting as the meeting place of democracy.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Williamstown, Massachusetts, this 27th day of February, 1984.

/s/ James MacGregor Burns
PROFESSOR JAMES MacGREGOR BURNS

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NO. C-83-5599-MHP

(Caption omitted in printing)

DECLARATION OF
EDMOND COSTANTINI IN SUPPORT
OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

Date: April 2, 1984

Time: 10:30 a.m.

I, EDMOND COSTANTINI, declare as follows:

1. I am a member of both the State Central Committee of the Democratic Party of California and of that body's Executive Board. I have been a member of both organizations since 1978. I also serve as chair of the California Credentials Committee. I have been an active member of the Democratic Party since 1960.

2. As chair of the Credentials Committee, I preside over meetings held to consider whether individuals should

be credentialed as members of the State Central Committee. In 1980, the credentials of Tom Metzger were challenged, placing the matter before our Committee. Tom Metzger had been a Democratic nominee for Congress from the San Diego area, but had been defeated by Representative Clair Burgener, a Republican. Mr. Metzger received the nomination even though he was a Grand Dragon of the Ku Klux Klan and stood for policies abhorred by the Democratic Party and its members. Because of the provisions of the Elections Code, the Democratic Party could not promote the candidacy of a more representative Democrat or argue to the electorate that Mr. Metzger's program and ideas should be rejected. The Credentials Committee did not credential Mr. Metzger, a position affirmed by the whole State Central Committee.

3. I recently learned that in the spring of 1983 Assemblyman Richard Floyd introduced a bill into the Assembly, A.B. 1977, that would have changed the method of selecting the members of the Democratic State Central Committee, forcing the Party to revert in large part to the system that had existed before 1979. A true and correct copy of that bill as it was originally proposed is appended hereto as Exhibit A. The State Party had long deliberated over the matter of internal reform—a process in which I was intimately involved—and, after the conclusion of those deliberations, had succeeded with considerable difficulty in persuading the legislature to abandon the pre-1979 structure. The Party advocated reform because the old system did not provide for the fair representation of County Central Committees or grass roots activists on the State Central Committee. In short, it did not meet the needs of the

party. It was therefore distressing to learn that this bill, A.B. 1977, had been introduced into the legislature without consultation with the Party and, as far as I know, without the knowledge of the official Party leadership. The Party has avoided being injured by this misconceived bill because of legislative amendments that have struck these offending provisions.

4. The danger of allowing the Legislature to have such extensive control over a political party's structure is well illustrated by this example. Only the party can best judge its needs and thus best structure its organization. As long as the legislature has the power to change the rules governing the internal affairs of a political party at will, the health and welfare of that party is in constant jeopardy.

5. Late in 1983, I learned that the California Fair Political Practices Commission had directed its staff to prepare a report on slate mailings in the 1982 primary campaigns. I contacted a member of the staff to request a copy of that report, which that person later gave me. It identifies a number of problems associated with slate mailings which affect the health and well-being of our political system. I agree with the report's conclusion on page 55 that these problems could be ameliorated by allowing "party endorsements in primary campaigns so as to offset the 'growing power' of slate mailings." I have appended hereto as Exhibit B a true and correct copy of this report.

6. Also appended hereto, as Exhibit C, is a true and correct copy of a slate mailer distributed by Willard Murray in the Los Angeles area in June 1982.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at ————, California, this —— day of February, 1984.

/s/ Edmond Costantini
PROFESSOR EDMOND COSTANTINI

SUPREME COURT OF THE UNITED STATES

No. 87-1269

March Fong Eu, Secretary of State
of California, et al.,
Appellants

v.

San Francisco County Democratic
Central Committee, et al.

APPEAL from the United States Court of Appeals for the Ninth Circuit.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

The Chief Justice took no part in the consideration or decision of this order.

April 18, 1988

Supreme Court, U.S.
FILED
JUL 1 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1269

In The

Supreme Court of the United States

October Term, 1987

MARCH FONG EU, Secretary of State of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; LEO HIMMELSBACH, District Attorney of Santa Clara County;
Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR APPELLANTS

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QUESTIONS PRESENTED

The California Elections Code contains dozens of provisions pertaining separately to each of its ballot-qualified political parties and several which pertain to such political parties generally. Of these provisions, only those prescribing the membership of the state central committees of the California Democratic and Republican parties, the term of the chairpersons of the California Republican and Libertarian party state central committees and proscribing endorsement by state and county party central committees of candidates for the party's nomination for partisan office in the primary election were invalidated by the courts below.

Do these provisions constitute substantial and impermissable infringements on the First Amendment rights of the affected political parties and their members where the provisions reflect the policies of the parties, were enacted at their request and are necessary to enable them to enforce their policies in state courts.

Do these provisions constitute such infringements where a state provides the candidates of political parties with access to its general election ballot through means other than the primary election without regulation of the parties but reserves the privilege of state-conducted nomination elections and automatic access of candidates so nominated to the general election ballot to political parties which adhere to such provisions enacted to promote the state's interest in a stable and democratic system of government.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, which is set forth in volume I of the appendix to the jurisdictional statement (J.S.App.I) at pp. 2a-41a, is reported at 826 F.2d 814.

The orders and judgment of the United States District Court for the Northern District of California are not reported. They are set forth at J.S.App.II 42a-78a.

JURISDICTION

March Fong Eu, Secretary of State of the State of California, John K. Van de Kamp, Attorney General of California, Leo Himmelsbach, District Attorney of the County of Santa Clara, and Arlo Smith, District Attorney of the City and County of San Francisco, the appellants, appeal from the final judgment of the United States Court of Appeals for the Ninth Circuit, filed August 18, 1987 and amended October 29, 1987.

The judgment is subsequent to an order of this Court issued in this case on January 12, 1987, (— U.S. —, 107 S.Ct. 864, 93 L.Ed.2d 820) vacating the judgment of the Ninth Circuit and remanding to it for further consideration in light of this Court's decision in *Tashjian v. Republican Party of Connecticut*, 479 U.S. —, 107 S.Ct. 544 (1986). The Court of Appeals had jurisdiction pursuant to 28 USC § 1291 and Fed. Rules Civ. Proc. § 54(b). By order issued on October 29, 1987, the Court of Appeals denied appellants' petition for rehearing with suggestion for rehearing en banc. (J.S.App.I 6a)

By order filed November 17, 1987, the Court of Appeals denied appellants' motion to stay issuance of its mandate pursuant to Rule 41(b), Fed. R. App. P. until final disposition of an appeal to this Court. (J.S.App.I

61a). Notice of appeal to this Court was filed with the clerk of the Court of Appeals on November 19, 1987 and an amended notice of appeal was filed on January 14, 1988. (J.S.App.I 53a & 57a) Appellants' application to Justice Sandra Day O'Connor for a stay of the mandate was denied on December 4, 1987, after consideration of the written opposition of appellees.

This appeal was docketed in this Court within 90 days from the entry of judgment below. The jurisdiction of this Court is invoked pursuant to 28 USC § 1254(2).

This Court noted probable jurisdiction by order issued April 18, 1988 without the participation of the Chief Justice. (J.A. 130)

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CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

First Amendment, United States Constitution:

"Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble. . . ."

Fourteenth Amendment, United States Constitution:

". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 United States Code section 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the

deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . ."

California Elections Code sections:

8660, 8661, 8663, 8664, 8665, 8667 and 8669 (membership of the Democratic State Central Committee);

9160, 9160.5, 9161, 9161.5, 9162, 9163, and 9164 (membership of Republican State Central Committee);

9274 (term of chairperson of Republican State Central Committee);

9816 (applicable to term of chairperson of Libertarian State Central Committee);

11702 (prohibits endorsement by party state and county central committees of candidates for the party's nomination for partisan office at the primary election);

29102 (provides penalties for violations of laws relating to elections);

29430 (provides a penalty for claiming an endorsement as official candidate of political party in the primary election).

The text of the foregoing provisions of the California Elections Code, the enforcement of which against plaintiffs was prohibited by the judgment below, and of other provisions of the Code which were challenged but not invalidated in this litigation are set forth in J.S.App.II 288a et seq. A chart summarizing all of the provisions of the Elections Code relating directly to the California Democratic Party is set forth at J.S.App.I 63a et seq.

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STATEMENT OF THE CASE

The judgment of the Ninth Circuit reaffirms its previous judgment (792 F.2d 802) affirming summary judgment entered by the United States District Court for the Northern District of California on April 16, 1984.

The judgment of the District Court held that provisions of the California Elections (Cal. Elec.) Code prescribing the membership of the state central committees of the California Republican and Democratic parties, the terms of the chairpersons of the state central committees of the California Libertarian and Republican parties and prohibiting endorsements by state and county central committees of primary ballot-qualified political parties of candidates for their respective party's nominations at the primary election violated the Freedom of Speech and Free Association Clauses of the First Amendment of the United States Constitution, as applied to the states through the Fourteenth Amendment, and 42 USC § 1983, were therefore invalid and enjoined appellants from enforcing said provisions against plaintiffs.

The record of proceedings out of which these judgments arise is described below.

1. The Plaintiffs

The primary plaintiffs in the litigation before this Court are the National Committee for Party Renewal and its affiliates the Northern and Southern California Committees for Party Renewal. The Committees are "unincorporated associations of private citizens . . . dedicated to strengthening political parties . . . as participatory vehicles for the expression of the will of the citizenry . . . [and which include] among their membership persons who are active members and leaders of their respective political party organizations." (First Amended Complaint, ¶¶ 15-16; Dist.Ct.Doc. Entry (D.C. Doc.) # 4, filed Dec. 5, 1983)

For more than a year prior to the initiation of this litigation the attorney for the National Committee for Party Renewal, who is also counsel of record for the appellees before this Court, coordinated the Committees' effort to enlist organizations of California ballot-qualified political parties as plaintiffs in this litigation. (Appendix to Appellants' Briefs on Appeal, vol. X, pp. 15,49,112-113, filed with Court of Appeals July 23, 1984; Defendants' Reply Memo Re Authorization of Lawsuit, p. 10, filed with Court of Appeals on August 13, 1984.)

The record before the District Court does not demonstrate that prior to being contacted by the Committee any of the ballot-qualified state political parties had taken any official action to urge the repeal or amend any of the statutes which plaintiffs have challenged as members thereof or to adopt by-laws inconsistent therewith. Moreover, evidence filed with the Court of Appeals demonstrates that the only purported plaintiff Republican organization, the San Francisco County Republican Central Committee, did not in fact authorize participation in this litigation pending in the District Court. (App. to Appellants' Briefs on Appeal, vol. IX, 58-61, filed with Court of Appeals on May 8, 1984; vol. X, pp. 7:17-19, 84-87, 104:3-8, filed July 23, 1984; vol. VII, pp. 936-937, filed April 16, 1984.)

The state central committees of the California Democratic and Republican parties are not plaintiffs nor are they otherwise parties to this litigation. Moreover, the record of the proceedings in the District Court indicates that the by-laws of the Democratic and Republican state central committees are not inconsistent with the statutes challenged in this litigation. (Exhs. 2 & 3 to Defendants' Opposition to Motion for Summary Judgment filed March 29, 1984; DC Doc. # 56; J.S.App.II a-140 *et seq.*)

The State Central Committee of the California Libertarian party is purportedly a plaintiff as to each of the three claims for relief set forth in the complaint. (First

Amended Complaint, pp. 13:7-8, 23:11-12, 35:27-28, DC Doc. # 4 filed December 5, 1983; J.S.App.II a-243.) However, the minutes of the November 21, 1982 meeting at which it is claimed that the Committee's participation in all three causes of action was authorized (Gingell decl., p.2, filed April 6, 1984, DC Doc. #70) indicate that there was authorization for participation in the second claim for relief only[1] and that was contingent on subsequent circumstances. (App. to Appellants' Briefs on Appeal, vol. X, p.83, filed July 23, 1984.)

The minutes of subsequent meetings of the State Central Committee provided by plaintiffs to supplement the record on appeal do not indicate that the subsequent conditions were ever fulfilled or that the purported authorization was expanded to include all three claims for relief. (Appendix to Appellants' Briefs on Appeal, vol. X, pp. 105-111, filed July 23, 1984.) The by-laws of the Libertarian State Central Committee do not conflict with he statutory prescription of the terms of its chairperson. (*Id.* at 72-81.)

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1. The second cause of action challenged the alleged statutory prohibition on endorsements of candidates for non-partisan office by central committees of political parties. (First Amended Complaint, pp. 77-89, filed Dec. 5, 1983, DC Doc. # 4) The District Court abstained from consideration of this cause of action because the question was then pending before the California Supreme Court but retained jurisdiction. (Dist. Ct. order entered April 16, 1984, p. 3:1-12, Doc. # 83) On December 27, 1984, the California Supreme Court held that California law did not prohibit such endorsements. (*Unger* v. *Superior Court* (1984) 37 Cal.3d 612, 209 Cal.Rptr. 474, 692 P.2d 238) At the June 3, 1986 primary election Proposition 49 to amend § 6 of art. II of the California Constitution to prohibit party central committees from endorsing candidates for nonpartisan offices was adopted by 55.9% of the vote. (Statement of the Vote by the California Secretary of State for June 3, 1986 Primary Election, at p. 50.) The complaint has not been amended to challenge this provision and no further proceedings have been conducted in the District Court on the second claim for relief.

The remaining plaintiffs are purportedly six Democratic party county central committees (there are 58 counties each with such a committee), chairpersons of most of the purported plaintiff central committees, and five individual party members (three Democratic and two Republican) of varying degrees of involvement in their respective party activities, some of whom are members of the Committees For Party Renewal. (First Amended Complaint, pp. 3-6, filed Dec. 5, 1983, DC Doc. #4; J.S.App.II a-245-a-249.)

Only four of the six purported plaintiff Democratic county central committees joined in the first claim for relief challenging Cal. Elec. Code, § 11702 which prohibits the state and county central committees of ballot-qualified state political parties from endorsing candidates for their respective party nominations for partisan office in the primary election. (First Amended Complaint, p. 13; J.S. App.II a-255.)[2] No Republican organization is a plaintiff as to the first claim for relief.

Members of county central committees are elected by members of their party residing in the county at primary elections conducted by the state. (See e.g., Cal. Elec. Code, § 8870, et seq.) The primary role in party affairs which county central committees are elected to perform is, under the general direction of the state central committee, to conduct their party's campaign in the general election for its nominees for partisan office selected at the primary election.[3] (Cal. Elec. Code, § 8940, 9276, and 9850.) The

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2. The Los Angeles County Democratic Central Committee joined only in the second claim for relief challenging the supposed statutory prohibition on committee endorsements for nonpartisan office. The Solano County Democratic Central Committee is not named as a plaintiff to the first claim for relief.

3. Although members of central committees are elected at the June primary election, they typically do not assume their duties until January of the following year so that the committee in existence at the primary conducts the party's campaign at the November general election. (Cal. Elec. Code, §§ 8920 [Democratic]; 9420 [Republican].)

derivative obligation not to endorse, support, or oppose candidates is the traditional limitation on the authority of central committees in California party politics that is enforceable by party members through the existence of Election Code § 11702. (Exh. 1 pp. 4-5 to Defendants' Opposition to Motion for Summary Judgment filed March 29, 1984; DC Doc. #56.)

Thus, county central committee members are elected knowing and on the condition that as a committee they will not endorse, support, or oppose candidates for their party's nomination in the primary election. Notwithstanding the reliance by their fellow party members on this restriction on the mandate of county committees in electing the members thereof, plaintiff committees have through the judgment below unilaterally terminated a duty of their offices and eliminated the ability of their fellow party members to enforce it.

2. The Claims For Relief

There is nothing in the record before the District Court which demonstrates that the policy of plaintiffs' respective parties is to authorize committee endorsements of candidate for the parties' nomination. Notwithstanding the apparent absence of such party policies favoring endorsements by state or county central committees, individual county committee chairpersons by virtue of their simultaneous membership on their respective state central committees and several other individual members thereof challenged the application of the statutory prohibition to state central committees in the first claim for relief. (First Amended Complaint, p. 17:1-18; J.S.App.II a-258-a-259.) These plaintiffs claimed that this prohibition did not permit them to "pursue or advocate political positions which they and other party adherents wish to espouse" and "to exercise their right to associate together with other party adherents to express their political beliefs." (*Id.*)

The third claim for relief challenged state statutes which prescribed the composition and selection of the state central committees of the state Democratic and Republican parties, the terms of the chairpersons of the state central committees of the California Republican and Libertarian parties, the time and place of meetings of state and county central committees of each of the three state parties implicated by the litigation and limits on the amount of dues the central committees can charge their members. (First Amended Complaint, pp. 36-41; J.S. App.II a-276-a-282.)

3. The Answers of Defendants

Answers were filed on December 20, 1983 by the defendant District Attorney of Los Angeles County (DC Doc. #11) and on December 16, 1983 by the defendant Attorney General of California on behalf of himself, defendants Secretary of State of California and the district attorneys of San Francisco, Santa Clara, and Placer counties.[4] (DC Doc. #6.)

The answers placed the material allegations of the complaint at issue; challenged the subject matter and constitutional jurisdiction of the District Court; raised the insufficiency of the complaint to establish plaintiffs' capacity and standing to sue; objected that necessary or interested parties had not been joined; urged that the court abstain from exercising jurisdiction as to any cause of action so that state courts could determine enforcement responsibility, the scope of the challenged statutes and their constitutionality and because the issues were not

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4. Defendant district attorneys of Alameda, Contra Costa and Solano counties filed answers by way of disclaimer of interest in the litigation on December 16 and 27, 1983 (DC Doc. ## 7, 8 & 12) and sought leave to refrain from participation therein which was granted by the District Court. (Order entered March 2, 1984; DC Doc. # 20; J.S.App.II a-235.)

ripe for adjudication and were political questions; contended that complaint failed to allege facts sufficient to confer jurisdiction pursuant to the federal statutes cited therein; and asserted the failure of the first amended complaint to allege facts for which relief could be granted against defendants.

4. Activity In The Case Before Plaintiffs' Motion For Summary Judgment

On or about December 20, 1983, plaintiffs served sets of requests for admissions and production of documents and interrogatories on the Secretary of State and the Attorney General. (DC Doc. #9.) The responses to discovery which defendants provided plaintiffs on or about January 31, 1984 were voluminous and had been very time consuming to locate, assemble and produce. (DC Doc. #14 & 15.)

After the responses to discovery were provided by defendants, responsibility for representing defendants was reassigned to another deputy attorney general in late January 1984 because the previously assigned deputy took a leave of absence. (Graybill decl. in opposition to mtn. for sum. judgmt., p. 5:21-26, filed March 29, 1984; DC Doc. #57; J.S.App.II a-118.)

Defendants represented by the Attorney General and the defendant District Attorney of Los Angeles County filed a joint status conference certificate on February 21, 1984 (DC Doc. #18; J.S.App.II a-237) for the status conference scheduled by the District Court to be held on February 27, 1984. These defendants informed the court that they intended to raise standing and jurisdictional issues and to conduct discovery with regard to those issues and requested that the court issue an order limiting discovery to jurisdictional and standing issues only pending a ruling on defendants' anticipated motion to dismiss or for summary judgment based on those grounds. (*Id.*, p. 3.)

Plaintiffs' status conference certificate (pp. 4-5) requested the court to specially set a hearing on their motion for summary judgment which they announced would be filed on or about March 2, 1984. (DC Doc. #17.) Plaintiffs had been preparing their case for more than a year before it was filed. (App. to Appellants' Briefs on Appeal, vol. X, pp. 15,49,112-113, filed July 23, 1984; Defendants' Reply Memo Re Authorization of Lawsuit p. 10, filed with Court of Appeals on August 13, 1984.)

At the status conference held on February 27, 1984, the court informed defendants that plaintiffs' anticipated motion for summary judgment would proceed at the earliest possible time permitted by its calendar in light of the California primary election pending in June, 1984. (R.T. of status conf., p. 5:15-19 (DC Doc. #82); J.A. 29.) The court ordered that all motions and supporting documentation be filed the following Monday, March 5, 1984 for hearing on April 2, 1984. (R.T. of status conf., p. 7:12-17; J.A. 31.) With regard to defendants' need to conduct discovery in connection with their motion to dismiss or with opposition to plaintiffs' motion for summary judgment the court stated (R.T., p. 9:13-25; 10:1-2,11-14; J.A. 33):

> "The Court: Counsel, let's do this, because the time is short, admittedly. I will give you a chance to respond to their motions for summary judgment without any discovery in your response. If you need additional discovery, set forth a response what additional discovery you need and approximately how much time you need to do it. I will not rule on any motion for summary judgment if there is discovery that needs to be done in order to address it. . . . If you can make a good showing in your papers as to why you need discovery on the motion to dismiss, then I will consider whether some appropriate time is necessary in order to allow you to do discovery on that, as well . . . . I will not resolve that motion [summary judgment] if it appears that there is discovery that needs to be done without giving you an opportunity to do discovery, which of course the rules [Fed. R.Civ.P., Rule 56 (f)] provide for." (Bracketed info. added.)

The court also requested that plaintiffs cooperate with defendants by providing defendants with informal discovery as needed to prepare the opposition to the motion for summary judgment. (R.T. 10:21-25; J.A. 33-34.)

5. Defendants' Motion To Dismiss

As ordered, defendants filed a motion to dismiss on March 6, 1984. (DC Doc. #48.) Defendants demonstrated that the first amended complaint did not and could not properly allege defendants had threatened to enforce the challenged statutes against any plaintiff. The inability to allege such threatened activity precluded the existence of a case or controversy between any plaintiff and any defendant necessary to establish federal jurisdiction pursuant to Art. III of the U.S. Constitution.

As to their third claim for relief regarding statutes prescribing the organization and procedures of the central committees, plaintiffs alleged that Elections Code § 29102 made it a criminal offense prosecutable by defendants for central committees and officers thereof to adopt and conform to organization and procedures which conflict with those prescribed by statute. (First Amended Complaint, ¶¶ 17-25, 62-63; J.S.App.II a-249-a-251 & a-280-a-281.) Plaintiffs asserted the threat of such enforcement inhibits them from deviating from the statutorily prescribed organization and procedures and from recommending that their parties conduct their affairs in unspecified ways "best suited to achieve the parties' objectives." (First Amended Complaint, ¶¶ 64-66; J.S.App.II a-281.)

Defendants pointed out that violations of the challenged statutes are not criminal offenses defined by Elections Code § 29102 which provides:

> "Every person charged with the performance of any duty under the provisions of any law of this state *relating to elections*, who willfully neglects or refuses to perform it, or who, in his official capacity, knowingly and fraudulently acts in contravention or violation of any of the provisions of such laws, is, unless a different punishment is prescribed by this code, punishable by fine not exceeding one thousand dollars ($1,000) or by imprisonment in the state prison for 16 months or two or three years, or by both." (Emphasis added.)

Not only are the purported plaintiff committees not "persons" within the meaning of the section, but none of the statutes challenged in the third claim for relief prescribe any duties "relating to elections" with respect to plaintiffs or anyone else.

Thus, the only basis for inferring a threat of enforcement of the provisions by defendants against any plaintiff was non-existent as a matter of state law. There being no threat of enforcement by defendants, plaintiffs had failed to allege the existence of a case or controversy with defendants concerning the application of those statutes to them as required by Art. III.

Defendants also demonstrated that plaintiffs had not alleged and could not allege an actual threat of enforcement by defendants against them or anyone else of the statutory ban on endorsements by central committees for nomination for partisan office. The sole basis for plaintiffs' claim of injury threatened by defendants (First Amended Complaint, ¶¶ 36-39; J.S.App.II a-255-a-256) was that violation of the ban on endorsements by central committees set forth in Elec. Code § 11702[5] was punish-

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5. Elections Code § 11702 provides:

"The state convention, state central committee, and the county central committee in each county are the official governing bodies of a party qualified to participate in the direct primary election. The state convention, state central committee, and the county central committee in each county shall not endorse, support, or oppose, any candidate for nomination of that party for partisan office in the direct primary election."

able as a criminal offense pursuant to Elec. Code, § 29430 which provides:

> "No candidate for the nomination of a political party for a partisan office in the primary election shall claim, nor shall any other person claim on his behalf, that he or she is the official candidate or the officially endorsed candidate of such political party. A violation of this section by any person shall constitute a misdemeanor."

§ 29430 literally does not make endorsement by a central committee or the claim of endorsement by a committee a criminal violation; it is the claim that such an endorsement constitutes endorsement of the "political party" that is subject to criminal sanction. The prohibited claim is inherently fraudulent because the only possible "official candidate" or "officially endorsed candidate of such political party" is the nominee selected at the primary election. (Elec. Code, § 6610.)

Plaintiffs' interpretation of §§ 11702 and 29430 as imposing a duty to prosecute them for any violation of § 11702 was the sole basis for their inference of a threat of enforcement by defendants against them. There were no allegations of actual threatened prosecutions or other enforcement of these statutes by any defendant against anyone in the past. Thus, there was no actual case or controversy with respect to any defendant.

Defendants also contended that an interpretation by a federal court that violations of the challenged statutes by plaintiffs would constitute criminal conduct under state law, which defendants would have a duty to prosecute, in the absence of any state precedent for that interpretation or of actions by defendants consistent with that interpretation would violate the state's rights under the Eleventh Amendment as interpreted by this Court in *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 106 (1984).

The failure of the complaint to allege injury from the existence of any challenged statute to any interest of any plaintiff protected by the First Amendment was another basis for the motion to dismiss. Purported plaintiff central committees and most of their chairpersons alleged a myriad of reasons they believe the best interests of their parties require that they as organizations of their respective political parties and adherents thereof should not be prohibited from endorsing candidates for the nomination of the party in the primary election.

However, there are no allegations that the political parties themselves have manifested policies which concur with plaintiffs' views that endorsements by central committees are in the best interests of the parties.

The First Amendment interests alleged by plaintiffs all pertain to their right as party organizations to express their views and to be heard as such by other party members. (First Amended Complaint, ¶¶ 15-16; J.S.App.II a-248.) There being no allegation that the parties have bestowed such rights on plaintiffs, the statutes which prohibit such conduct cannot be said to violate the First Amendment rights claimed by plaintiffs to be derived from their membership and association as political parties. Moreover, the county central committees having been elected on the premise that they cannot endorse candidates, the need for manifestation of party policy authorizing endorsement should be essential for standing to challenge the statute.

Defendants also contended that the plaintiffs' allegations that but for the challenged statutes prescribing organization and procedure they would recommend that the current rules be abolished and replaced by unspecified different rules (First Amended Complaint, ¶ 66) were insufficient to establish injury which would sustain standing to challenge the statutes. The statutes don't prohibit them from advocating change or preclude the committees

from adopting policy statements conflicting with the statutes.

There is no allegation that the challenged statutes do not reflect the will of the parties or that the parties have tried to change their organizations only to be prevented from implementing them by the existence of the statutes. Plaintiffs sought to invoke First Amendment rights of their respective parties without any manifestation that the statutes conflicted with the policies of those political parties.

6. Plaintiffs' Motion For Summary Judgment

On March 5, 1984, plaintiffs filed a motion for summary judgment consisting of 350 pages of documentation including 25 declarations and 19 exhibits excluding the numerous exhibits attached to many of the declarations. (DC Doc. #s 41-47 & 50.) Fifteen of the declarations were by individual named plaintiffs. (DC Doc. #s 22, 24, 28, 30-35, 40-41, 47 & 50.) Only two of the declarations of individual plaintiffs makes any reference to the position of his or her political party with regard to the statutes challenged in this litigation. (Gingell, Doc. #24; App. to Motion to Affirm or Dismiss (M.A.D. App. 24a and Coffey, Doc. # 40; M.A.D. App. 9a.)

The Gingell declaration does not ascribe any position to the Libertarian Party or to the state central committee thereof regarding the ban on endorsements by central committees of candidates for the party's nomination for partisan office in the primary election. Ms. Gingell does not express the opinion which is standard in the declarations of most of the other party committee member plaintiffs that absent the statutory ban any Libertarian party central committee would make endorsements for the nomination of the party. Ms. Gingell expresses her personal opinion that Libertarian party organizations should be free to make such endorsements for the good of the party. (P. 2:9-15; M.A.D. App. 25a.) The only statements in the Gingell declaration regarding the party concern its purportedly being required to organize itself by county instead of by region as it had done prior to becoming a ballot-qualified party in 1980. (P. 2:23-28; M.A.D. App. 25a-26a.) This information is irrelevant because the First Amended Complaint does not challenge the statutes which prescribe that organization for the Libertarian central committees.

Other than the county-region distinction Ms. Gingell does not specify in what manner the party is "still burdened by having to establish a totally new statewide organization that differed from our preferred and natural party structure." (P. 3:1-9; M.A.D. App. 26a.) These gaps in her ability to specify any differences may be explained by the fact that Ms. Gingell did not become an active participant in party activities until a year after it became a ballot-qualified party. (P. 2:2-21; M.A.D. App. 25a.)

Moreover, her lack of specificity may be the result of the absence of any official manifestation of party incompatibility with the statutory organization and procedures. Although Ms. Gingell asserts that the "Libertarian Party has unsuccessfully tried to persuade the State Legislature to enact legislation specifically tailored to our organizational needs" (p. 3:10-17; M.A.D. App. 26a), the specifics of the legislation are not discussed, a copy of the legislation is not attached and there is no explanation of what official actions of the Party manifest this legislation as the policy of the Party.

The declaration of Mr. Coffey, a member of the Democratic State Central Committee and its chairperson from 1977-79, does not ascribe any position to the state central committee or to the party regarding whether central committees should be permitted to make endorsements of candidates for the nomination of the party for partisan office or of candidates for non-partisan office.

Mr. Coffey does assert that "the Party" had been engaged in efforts to reform its organizational structure

for twenty years prior to his becoming chairperson of the state central committee in 1979. (P. 4:7-18; M.A.D. App. 12a.) Mr. Coffey does not explain what he means by his reference to "the Party". However, he does describe his version of how legislation was enacted during his term as chairperson changing the composition of the state central committee to provide more representation for county committees as he and "other members of the Party leadership" had proposed. (P. 4:19-28; M.A.D. App. 12a.)

There is no indication of any formal action by "the Party" endorsing the legislation he proposed and Mr. Coffey asserts that "[a]lthough the Legislature finally agreed to change the rules, they did so only after a protracted, hard fought battle and even then substantially deviated from the Party's proposal". (*Id.*) The absence of any formal party endorsement for his proposals and the resultant need for the Legislature to attempt to ascertain the position of "the Party" is a very likely explanation for the deliberation afforded the legislation in the legislature.

Although Mr. Coffey is personally dissatisfied with the current rules regarding the composition of the state central committee because he believes county committees are still underrepresented (p. 4:27-8; 5:1-4; *id.*), he does not ascribe that view to "the Party" nor does he assert that any other feature of the challenged statutes conflict with the policies of "the Party."

The declaration of Edmond Constantini, a member of the Democratic State Central Committee who is not a plaintiff, is the only other declaration submitted in support of plaintiffs' motion which makes reference to the policies of a political party implicated by this litigation. (DC Doc. #46; M.A.D. App. 14a.) Mr. Constantini refers to the same legislation enacted in 1979 regarding the composition of the state central committee described in Mr. Coffey's declaration. (P. 2:20-28; M.A.D. App. 15a-16a.)

He does not indicate that party policies are inconsistent with the statutes challenged in this litigation.

Moreover, Mr. Constantini cites an incident where the legislature eliminated legislation which would have changed the statutes to conflict with the rules of the state central committee. *(Id.)* Notwithstanding the demonstrated responsiveness of the legislature to manifested party policy, Mr. Constantini believes the legislature has no legitimate role in superintending the rules of the state central committee. *(Id.)* However, he does not ascribe this view to the party.

The declarations of other central committee member plaintiffs essentially reiterate the conclusory material allegations of the complaint. Defendants contended in their motion to dismiss that these allegations were insufficient to establish injury to any plaintiff's individual First Amendment rights, to establish any injury resulting from the existence of the statutes or to establish any threatened action by any defendant which impairs the First Amendment rights of any plaintiff. The material allegations are supplemented with anecdotes and expressions of personal opinion regarding the best interests of the pertinent political parties.

Of particular significance is the "boilerplate" assertion of many of these declarations concerning the purported right of county central committee members to associate together in that capacity to make endorsements to educate the less well informed members of their respective parties (Mack declaration, p. 4:1-10; DC Doc. #43; see also, #21,¶ 10; #28,¶ 7; #31,¶ 7; #33,¶ 8; #34,¶ 6; #35,¶ 18; #37,¶ 12; #47,¶ 12):

> "I became a member of the County Central Committee because I shared the political beliefs of the other members of that organization. I thought that the County Central Committee could advance these shared political beliefs far more effectively than I

could as a single individual. Even as chairperson of that Committee, my individual endorsement is worth far less than the collective endorsement of the County Central Committee as a whole. Since the Committee cannot endorse in primary or non-partisan campaigns, our whole purpose in associating together has been frustrated."

Most of the declarations also repeat the standard assertion that the county committees would like to endorse candidates for the party nomination in the primary election and would do so but for the existence of the statute prohibiting it. However, there are no references to official action of any type by the committees manifesting an intent to do so or to authorize participation in this litigation.

None of the declarations refers to any policy of the affected political party mandating or authorizing or encouraging county central committees to perform the endorsement function in the interests of the party. Moreover, the declarations do not claim a mandate for committee members from the party members who elected them pursuant to the statutory conditions that the committees will not make endorsements of candidates for the party's nomination in the primary election and that the primary function of the committees is to carry out the party's campaign for its nominees in the general election under the supervision of the state central committee.

The declarations also typically assert that the party members have a need for information regarding candidates for the nomination of the party uniquely available from central committees. However, one of the expert opinion declarations submitted by plaintiffs in support of their motion cites research which indicates that an overwhelming majority of party voters do not consider endorsements by party organizations meaningful in making their decisions on candidates in primary elections. (Jewel decl., ¶¶ 14-15; DC Doc. #44; J.A. 97-98.)

7. Defendants' Response to the Motion for Summary Judgment

In reviewing the plaintiffs' documentation in support of their motion for summary judgment it was apparent that plaintiffs had not remedied the failure of the First Amended Complaint to demonstrate that the challenged statutes conflicted with the policies of the affected political parties. Based upon this analysis and other information that became available to defendants, there was good reason for defendants to believe that they could develop evidence establishing that, especially with regard to the Democratic and Republican parties, the challenged statutes were enacted at the request of and with the active support of the affected political parties and reflected their current policies.

Not only would this evidence highlight the gaps in the documentation in support of the plaintiffs' motion for summary judgment but the evidence would also demonstrate the absence of a substantial infringement on the asserted First Amendment rights of plaintiffs and the implicated issues of standing and Art. III jurisdiction and would focus on one of the aspects of the state's compelling interests promoted by the challenged statutes—promoting the stability and democratic nature of its ballot—qualified political parties by enabling them to enforce their own policies in state court. However, defendants were aware that this information could not be developed within the time alloted by District Court rules to respond to the motion for summary judgment.

Accordingly, defendants applied to the District Court for a three week extension of time to develop the information some of which would have to come from sources not under the control of either plaintiffs or defendants. Hearing the defendants' application by telephone conference on March 12, 1984, the District Court granted a one-

week extension of the hearing on the motions to dismiss and summary judgment to April 9, 1984. (R.T., DC Doc. #93; J.A. 37; Order, Doc. #52.) In so ruling the Court stated (R.T. 12:15-25; 13:1-2; J.A. 41):

> "I know that doesn't give defendants as much time as they asked for, but time is critical. I am keeping in mind the burden that you do have.
>
> "If there are factual issues that you have not been able to reach, either because of discovery or investigation problems, then I suggest what you do is that you set those forth, those problems forth in your papers when you file them. Now, it is not automatically going to give you additional time to file papers after the hearing. So don't depend on that. But if those are critical, and you have not been able to compile whatever factual matters that you have to have in order to respond, you may set those forth in your papers here when you file them on March the 26th."

In light of these time constraints and mindful of the Court's suggestion at the status conference regarding informal discovery from plaintiffs, defendants sent a letter to plaintiffs' counsel making specific requests for information in plaintiffs' possession which might demonstrate the position of their respective political parties on the statutes challenged in the litigation. (J.S.App.II a-120 - a-124.)

Defendants also requested any minutes which plaintiffs assert reflect conflict between their own policies and the challenged statutes and by-laws with which to determine whether such policies were effected as required thereby. *(Id.)* This information could be pertinent to establishing that the statutes complained of did not substantially infringe on the alleged rights of the committees. Moreover, the failure to comply with by-laws would provide evidence of the need for state statutes establishing procedures for parties enabling members to enforce them in state court. The information would also be relevant to

whether the plaintiffs who were invoking the equitable jurisdiction of the court were themselves before the court with "clean hands" and having done equity themselves.

Plaintiffs did not provide defendants with any of the requested information prior to their filing their opposition to plaintiffs' motion for summary judgment and their cross-motion for summary judgment on March 29, 1984. (DC Doc. #s 55-57.) Defendants were unable to secure most of the requested information on their own and filed with their opposition a declaration of counsel describing what efforts had been made to secure the necessary information and what more needed to be done in order to respond to plaintiffs' motion as had been suggested by the District Court pursuant to Rule 56 (f), Fed. Rules Civ. Proc. (Graybill decl.; J.S.App.II a-114 - a-124.)

Amongst the information which defendants had acquired but could not yet document was that the Executive Board of the Democratic State Central Committee had rejected a resolution to join as a plaintiff in this litigation. (J.S.App.II a-116.)

In opposition to plaintiffs' motion for summary judgment, defendants submitted the by-laws of the Democratic and Republican state central committees. (J.S.App.II a-149 - a-231.) These documents showed that there was no conflict between the by-laws and any of the statutes regarding organization and procedures of the state central committees challenged in the third claim for relief. The documents do not contain any statements authorizing endorsements by any central committees.

Defendants also submitted the declaration of a recently retired state senator with over twenty years experience in the State Legislature and on the Democratic State Central Committee. (J.S.App.II a-105 - a-112; J.A. 60-69.) Albert S. Rodda declares on personal knowledge that the Democratic and Republican parties supported the statutory

ban on endorsements by party central committees because the divisiveness on the committees created by the process of endorsement impairs the ability of the committees to carry out the primary function assigned them by the parties of carrying out the party's campaign for the nominees selected at the primary election and utilizing the resources of previously contending factions in that effort. (J.A. 63-66.)

Moreover, the senator stated that statutes governing the internal affairs of the Democratic and Republican central committees were enacted at the request of and with the active support of the party affected without interference from members of the opposite party. (J.S.App.II a-106; J.A. 63.)

Defendants also submitted an opinion of the Attorney General issued in 1954 which demonstrated that the ban on central committee endorsements had been the unvarying policy and practice of the California Democratic and Republican parties continuously since before the advent of the direct primary system for the same reasons recounted by Senator Rodda. (J.S.App.II a-140 - a-148.)

All defendants or authorized representatives thereof submitted declarations establishing that their offices had never been involved in the enforcement of any of the statutes challenged in this litigation and expressed the opinion that violation of these statutes, as contemplated by plaintiffs, did not constitute criminal offenses. (J.S. App.II a-93 - a-104, a-125 - a-139.)

In their brief in opposition to the plaintiffs' motion for summary judgment and in support of their own, defendants set forth the interests of the state which justify the challenged statutes in the event, which had not been established by plaintiffs, that they conflicted with the policies of the affected political parties. (DC Doc. #56, pp. 14-27.) California recognizes the participation of political parties in its electoral system only if the parties are willing to conduct their functions in a manner which

promotes the state's interest in the stability and democracy of its electoral and governmental system. Otherwise the political parties can qualify their candidates for the general election ballot as independents or write-ins without regulation by the state.

If central committees endorse candidates for the party's nomination in the primary election, they will too often be disabled by divisiveness left over from that process to conduct an effective party campaign for the nominees in the general election and therefore the state prohibits such endorsements. There is no less restrictive method than an outright ban on endorsements to preserve that effectiveness.

The state also requires certain aspects of the organization and procedures of central committees including the composition of the state central committees and the terms of their chairpersons be subject to ratification in statute to assure that these factors are representative of the party and conducive to the stability of the central committee to carry out its campaign function. Codification of the rules also enables any member of the party to enforce them in state court.[6]

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6. Without the statutes unrepresentative minorities on central committees can change the by-laws or take action in the name of the committees such as in the case of state central committees to disenfranchise other committee members with whom they disagree without an opportunity for timely recourse by other committee or party members. An example of how this could occur is provided by the by-laws of the Democratic State Central Committee which consists of over 1,000 members (Court of Appeals Opinion, J.S.App.I 13a, 826 F.2d at 820). Pursuant to § 1 of art. VIII of the by-laws an executive board of approximately 280 members is vested with all of the powers of the central committee when it is not in session. (J.S.App.II a-193 - a-194) § 6 of art. VIII provides that as few as 50 members thereof constitute a quorum for the transaction of any business. (J.S.App.II a-195)

(Continued on following page)

It is apparent from the variance of the details of the same types of statutory organizational prescriptions applicable to the several ballot-qualified parties that the Legislature ratifies proposals which have widespread support within the parties and provides a wide variety of options for organizational and procedural features which promote its interests in democratic and representative party organizations and the resulting stable governmental system. Thus, the regulations are intrusive on the options of the parties only to the extent necessary to promote the states interests therein.

On Friday April 6, 1984 plaintiffs filed five declarations of plaintiff county committee members concerning authorization of the lawsuit by these committees. (DC Doc. #s 70-74.) Defendants' counsel did not receive copies of these declarations prior to the hearing on the motions on Monday April 9, 1984. (R.T. 47:5-9; 49:20-25; 50:1-10; J.A. 46, 48-49; DC Doc. #81.) Moreover, there were no committee minutes regarding authorization or committee by-laws attached to the declarations.

8. The District Court's Decision

At the hearing on the motions held on April 9, 1984. the District Court announced its rulings thereon.

The court denied defendants' motion to dismiss.

(Continued from previous page)

Pursuant to subdiv. (d) of § 1 of art. X as few as 34 members of the executive board can amend the by-laws. (J.S.App.II a-200) Moreover, resolutions can be presented without notice at any time during a meeting of the board and, if no members of the resolutions committee present at the time object, can be adopted by a vote of as few as 26 members of the executive board pursuant to § 7(d) of art. VIII. (J.S.App.II a-196) An example of utilization of this process is provided in the supplemental declaration of Edmond Constantini, pp. 2:6-28, 3:1-8, filed April 2, 1984. (DC Doc. #61.)

It found that the plaintiff central committees had in and of themselves, notwithstanding the policy of their parties' as a whole, the right to associate and endorse candidates for their parties' nominations and to associate to determine the composition of their state central committees and the terms of the chairpersons thereof which are protected by the First Amendment. (R.T. 52:17-20; 53:10-17; J.A. 54-55.)

The challenged statutes prohibited the endorsements and inhibited the ability of plaintiffs to effect change in the organization of the state central committees which constitute a substantial burden on those rights. (R.T. 55:9-21; J.A. 57.)

The court disagreed with the defendants' interpretation of the penal statutes cited by plaintiffs and held that they were applicable to plaintiffs if they violated the challenged statutes and that defendants would have an obligation under state law to prosecute defendants for such violations. (R.T. 53:17-23; J.A. 55.) Moreover, the court concluded that it was not precluded from making such a finding by the Eleventh Amendment as applied in *Pennhurst*. (R.T. 52:21-28; 53:1-9; J.A. 54-55.)

The court was especially concerned that the continued existence of the statutes would enable other party members to disrupt the activities of central committees through civil litigation based thereon. (R.T. 54:23-25; 55:1-22; J.A. 56-57.)

The court granted plaintiffs' motion for summary judgment with regard to the ban on endorsements in partisan primaries and the statutory prescriptions of state central committee composition and terms of chairpersons because it found that defendants had failed to make an adequate *factual* showing to support their asserted state interests served by the challenged statutes and had failed to adequately respond to the declarations submitted by plaintiffs. (R.T. 56:1-18; J.A. 57.)

The court denied defendants any opportunity to conduct further discovery or make further submittals with regard to the motions and its intended ruling (R.T. 51:9-25; 58:4-11; J.A. 53, 59) stating:

> ". . . I would deny a stay, and you may indicate in the order, if you want a stay you can go to the Ninth Circuit for maybe not so humble an opinion as mine."

On April 16, 1984, the court issued its order and judgment. (J.S.App.II a-67 - a-73.) The order and judgment reflected the Court's ruling at the hearing on April 9 and provided that the judgment would be final pursuant to Rule 54(b), Fed.R.Civ.P. notwithstanding that some claims set forth in the complaint had not been resolved.[7]

9. Proceedings In The Court Of Appeals

On April 16, 1984, defendants filed their notice of appeal from the judgment. (DC Doc. #85.) On the same date defendants filed an emergency motion for stay on appeal. The primary basis for the motion was that county central committees would be exercising the right to endorse candidates for their party's nomination in the upcoming primary election contrary to the mandate on which they were elected by their fellow party members if the stay were not granted pending resolution on the appeal.

On April 19, 1984, plaintiffs filed with the District Court two additional declarations of plaintiff committee members regarding committee authorization of this litigation. (DC Doc. #s 88-89.) Neither of the declarations included any documentation such as committee minutes, resolutions and by-laws to authenticate and provide the best evidence of the actions attributed to the committees.

7. The court had retained jurisdiction of the claim for relief regarding the supposed ban on endorsements by central committees of candidates for non-partisan office and had denied summary judgment for plaintiffs regarding the statutes limiting dues chargeable to central committee members and prescribing the time and place of the first meetings of the committees. (J.S. App.II 70-72)

On April 24, 1984, a motions panel of the Court of Appeals filed an order granting defendants' emergency motion for a stay of the judgment of the District Court pending resolution of the appeal. (J.S.App.II a-88.) In the same order the motions panel constituted itself as the panel to hear the appeal, expedited the appeal, scheduled oral argument on the appeal for May 15, 1984 and ordered that any briefs supplementing the briefs on the emergency motion be filed on May 8, 1984.

On May 3, 1984, the District Court filed its memorandom opinion in connection with the judgment entered on April 16. (DC Doc. #92; J.S.App.II a-42.) The opinion essentially elaborated on the points made by the court at the hearing on April 9.

On May 8, 1984 defendants filed with the Court of Appeals their supplemental brief which included as an exhibit a declaration of Terence Faulkner, a member of purported plaintiff San Francisco County Republican Central Committee. The declaration established that the committee had not in fact authorized participation in this litigation and that the declaration of plaintiff Dolph Andrews filed with the District Court on April 6, 1984 (Doc. #69) stating to the contrary was false. The Faulkner declaration was executed on May 4, 1984 and included an authenticated a copy of the committee by-laws with a statement of amendments.

Also on May 8, 1984 defendants filed with the Court of Appeals a "Civil Docketing Statement" which identified the issues on appeal to include all issues raised in defendants' motions in the District Court and the sufficiency of the record to support summary judgment for

plaintiffs including abuse of discretion pursuant to Rule 56 (f). (J.S.App.II a-89.)

The appeal was argued on May 15, 1984.

On May 25, 1984, the Court of Appeals entered an order partially remanding the matter for findings on the authority of plaintiffs to bring this action in light of plaintiffs' failure to provide discovery of committee minutes and by-laws. The broader scope of plaintiffs requests for discovery and deferral of the ruling on the motion for summary judgment are not mentioned.

On June 1, 1984 the Court of Appeals' remand order was filed in the District Court. (Doc. #100.) On the same day the District Court entered its order on remand finding that each of the plaintiff central committees had authorized participation in the litigation. (DC Doc. #103; J.S.App.II a-73.)

Also on June 1, 1984, plaintiffs filed with the District Court some minutes of some purported plaintiff committees pertaining to this litigation and some of their by-laws and a copy of the Faulkner declaration. (Doc. #s 101 & 102.) No mention of these documents is found in the District Court's order on remand.

On June 18, 1984, the Court of Appeals entered an order inviting briefs from plaintiffs and defendants concerning the District Court's order on remand limited to 10 pages each.

On June 19, 1984 plaintiffs filed with the District Court a "third submission re authorization of lawsuit" containing more minutes pertaining to the litigation and more by-laws. (Doc. #s 108-109.)

On June 22, 1984, the record on appeal was mailed from the District Court to the Court of Appeals.

By August 13, 1984 all of the parties' briefs had been filed pursuant to the invitation of the Court of Appeals.

Defendants demonstrated that plaintiffs' submittals had raised serious doubt that several purported central committees in addition to the San Francisco County Republican Central Committee had authorized participation in this litigation as set forth in the First Amended Complaint. Defendants pointed out that the "further submittals" by plaintiffs affected not just the issue of authorization but demonstrated the insufficiency of the record to support the District Court's findings concerning substantial infringement and enhanced the state's justification for the challenged statutes.

On September 13, 1984 yet another submittal by plaintiffs concerning authorization was filed with the Court of Appeals and on October 16, 1984 plaintiffs filed a "notice of action" by the San Francisco County Republican Central Committee acknowledging that it had not previously authorized participation in this litigation.

On August 15, 1985 the Court of Appeals requested further briefing due to the difficulty of the issues on the constitutionality of the challenged statutes and the legal status of party central committees.

On June 18, 1986 the Court of Appeals entered its opinion and judgment affirming the findings and judgment of the District Court. (792 F.2d 802) No mention is made in the opinion of the problem of authorization in any context or of the issue of abuse of discretion pursuant to Rule 56 (f).

The Court of Appeals stayed issuance of its mandate pending resolution of defendants' appeal to this Court. (J.S.App.II a-82)

By order dated January 12, 1987, this Court vacated the judgment of the Court of Appeals and remanded for reconsideration in light of *Tashjian v. Republican Party of Connecticut*, 479 U.S. —, 107 S.Ct. 544 (1986).

On August 18, 1987 the Court of Appeals entered its opinion (826 F.2d 814) and judgment after remand affirming the judgment of the District Court. The opinion essentially reiterates the Court of Appeals' earlier opinion with

the addition of its reasons for concluding that its opinion is consistent with *Tashjian*.

The opinion was amended by order entered October 29, 1987 which added an affirmance of the District Court's order on remand regarding authorization and also denied defendants' petition for rehearing. (J.S.App.I 4a-5a) The Court of Appeal affirmed based on the District Court's finding that defendants had not challenged plaintiffs' declarations regarding authorization. The Court of Appeals and the District Court overlook the fact that defendants did not receive the declarations until after the hearing before the District Court and that some were not even filed for days thereafter. Thus, neither the Court of Appeals nor the District Court has considered the facts concerning authorization in terms of merits of plaintiffs' claims.

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SUMMARY OF ARGUMENT

The record in this case cannot justify the undermining of California's direct primary system which would be effected by the invalidation of its statutes prohibiting pre-primary endorsements by central committees of ballot-qualified political parties and prescribing the selection of members and the terms of the chairpersons of the state central committees thereof.

The ban on endorsements effectively limits each party member to a single nominating act which is his or her vote in the primary election. The nomination is the party endorsement determined by a majority vote of all persons who choose to affiliate with that party in the primary election. No official party organization may exclude anyone from that right. On these conditions the state accepts the parties' endorsed candidates on the general election ballot identified as such.

The central committees are recognized and charged by statute to conduct the *party* general election campaign for its candidates selected at the primary election. The "party campaign" is very valuable because it can attract re-

sources not otherwise available to the nominees and thereby improve the candidates' prospects for election. The existence of this institutional capacity for "unifying" the party for the general election promotes the state's interest in stable government through improving the prospect of election of state officers with a broad enough mandate to govern.

Central committees which are not representative of decisions made by party members in the primary election or have an institutional structure that unnecessarily promotes divisiveness cannot effectively perform this function. The challenged statutes prescribing systems of representative membership for state central committees and terms of chairpersons, which avoid exacerbation of the conflicting interests of Northern and Southern California by regularly alternating the chair between representatives of these regions, are necessary to promote the state's interest in stable government. Therefore, California must retain its capability to review and ratify by statute this type of party rule.

Thus, California developed its primary election system including regulation of parties participating therein to promote interests reserved to it by the U.S. Constitution as a separate political jurisdiction. Political parties which do not find the California primary system suitable to their needs can exercise their First Amendment rights to associate and support candidates other than those of the ballot-qualified parties for the state's governmental offices in the general election without regulation by the state of their methods for doing so.

Ballot-qualified political parties have chosen that status with the knowledge of the rules of the California primary election system and can be reasonably understood to have decided that the rules suit their needs better than unregulated opportunity for political association. The experience of the most successful of these parties—the Democratic and Republican—has shaped the development of that system.

As demonstrated in the Statement of the Case, *supra*, the record of the proceedings below does not establish that the parties have adopted any policies in conflict with the challenged statutes. The conclusion of the judgment below that the statutes substantially infringe on the First Amendment rights of plaintiffs as subsidiary organizations of the parties and members thereof is unjustified on the record and does not comply with the prerequisites for summary judgment as explained, pp. 21-32, *supra*.

The severity of the deficiencies in the record is exemplified by the failure of plaintiffs to demonstrate in a reliable manner that the purported plaintiff committees actually authorized participation in this litigation or adopted policies in conflict with the statutes. (pp. 16-19, *supra*) The record is so severely deficient: that plaintiffs have failed to demonstrate standing pursuant to Art. III of the U.S. Constitution; and the finding that defendants constitute a threat of enforcement of the statutes against plaintiffs violates California's rights under the Eleventh Amendment. (pp. 12-16, 27, *supra*)

ARGUMENT

I

THE CHALLENGED STATUTES HAVE NOT BEEN SHOWN TO CONFLICT WITH THE POLICIES OF THE POLITICAL PARTIES AFFECTED AND THEREFORE DO NOT CONSTITUTE SUBSTANTIAL INFRINGEMENTS ON THE RIGHTS OF SUCH PARTIES AND THEIR MEMBERS PROTECTED BY THE FIRST AMENDMENT.

In *Marchioro v. Chaney*, 442 U.S. 191 (1979) this Court held that if a state statute does not conflict with the policies of a political party, the statute does not substantially infringe on the rights of its members and organizational manifestations to associate and speak through the party protected by the First Amendment. For this reason a Washington statute prescribing the composition of the Democratic State Central Committee was upheld against a challenge by officers of the state Democratic party and prospective members of the committee.

In *Tashjian v. Republican Party of Connecticut*, 479 U.S. —, 107 S.Ct. 544 (1986), this Court enjoined enforcement of a Connecticut statute, which barred independents from voting in partisan primary elections, in connection with the Republican primary. A conflict between the policies of the Republican party and the statute was held to be a substantial infringement on the freedom of the party and its members to associate for political purposes protected by the First Amendment. The manifestation of the party policy which established the conflict with the statute was as follows (107 S.Ct. at 547-8):

> 1. after conducting a study the state central committee recommended to the Convention of the Party that its rules be amended to allow independents to vote in the Party primary election;
>
> 2. the Convention adopted the recommendation and amended the rules;
>
> 3. the Republican leadership in the state legislature introduced legislation to amend the statute barring participation of independents to permit their participation in the Republican primary but the Democratically controlled legislature defeated the measure substantially along party lines.

The importance of the convergence of each of these three elements to demonstrate the position of a political party is manifested by analysis of what a political party is today. Parties have been described as "three-headed political giants" composed of the "party organization", the "party in office" and the "party in the electorate".[8] (F. Sorauf, *Party Politics in America* 8-11 (5th ed. 1984)

8. In his dissent in *Tashjian*, Justice Scalia notes the absence from the manifestation of the party policy of any concurrence by the "party in the electorate" and suggests the possible unreliability of ascertaining the position of the party without it. (107 S.Ct. at 560) This insight should demonstrate that the manifestation of party policy by the other two elements of a party together with the evidence of open deliberation and vote, which existed in the *Tashjian* case, should be the minimum required to establish a conflict between a statute and party policy.

Without a clear demonstration that each of these elements concurs in a representation of party policy which conflicts with a statute affecting the activities of the party, a court cannot be assured that invalidation of a statute, rather than its affirmance, actually constitutes a substantial infringement on the political rights of the party and its members protected by the First Amendment. In that event a court would be substituting its judgment for that of the party in determining what is in the best interests of the party which this Court has repeatedly cautioned should never occur (*Tashjian, supra,* 107 S.Ct. at 554):

> "'And as is true of all expressions of First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational.'"[9]

The judgments below have failed to follow this admonition with the result that in all likelihood the political rights of the political parties affected and of their members have been severely prejudiced. Moreover, the state's interests in promoting stable and democratic government have been unjustifiably preempted.

The plaintiffs cannot in any meaningful sense be said to represent the policies of their respective political parties in and of themselves or on the record of this case described in the foregoing Statement of the Case.

Of the 58 Democratic county central committees, only six are purportedly plaintiffs in this litigation. They don't

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9. Some lower courts have shown an inclination to respect this admonition. In *Ripon Society v. National Republican Party,* 525 F.2d 567, 582 (D.C. Cir. 1975), *cert. den.,* 424 U.S. 933 (1976):

> "In requesting that we impose a one person, one vote rule on the Republican Party, plaintiffs are not asking us to correct a historical aberration contrived at the 1972 convention. They are inviting us to take into judicial hands a process of change and adaptation that still continues within the party. [¶] We have twice declined that invitation. . . ."

Judicial intervention in the internal affairs of their respective parties is precisely what plaintiffs are seeking in this case.

agree amongst themselves as to which of the statutes challenged in this litigation are not, in their opinions, in the best interests of the California Democratic Party.

The largest purported plaintiff committee, the Los Angeles County Democratic Central Committee, did not challenge any of the statutes invalidated by the courts below. The by-laws of none of the purported plaintiff county central committees nor of the state central committee contained in the record below conflict with the challenged statutes. No other Democratic organizations or officers are parties to this litigation.

The only Republican organization purportedly a party to this litigation, the San Francisco County Republican Central Committee, did not authorize participation therein until after the case had been pending in the Court of Appeals for several months. (p. 29, *supra.*) This purported plaintiff did not challenge the statute prohibiting endorsements by central committees of candidates for their party's nomination. The by-laws of the Republican State Central Committee set forth in the record do not conflict with the challenged statutes including those which prescribe the terms of its chairperson and selection of its members.

Thus, Republican and Democratic plaintiffs, organizational and individual, have not demonstrated that their challenges to the statutes invalidated below are anything but quarrels with the policies of their own parties. There is nothing in the record of this case which disproves the fact of which this Court has virtually taken judicial notice (*Anderson v. Celebrezze,* 460 U.S. 780, ftn. 30 at 803 (1983): ". . . the drafting of election laws is no doubt largely the handiwork of the major parties that are typically dominant in state-legislatures . . . ". Moreover, it is undisputed on the record below that the parties in the legislature acquiesce in legislation brought by the other regarding its party organization and procedure. (p. 24, *supra.)*

The Libertarian plaintiffs, which are the former chairperson of and purportedly the state central committee, do not challenge the statutory prescription for selection of its membership. There is nothing in the record indicating that the by-laws of the Libertarian State Central Committee conflict with the statute prescribing the term of its chairperson. There is nothing in the record demonstrating that the Libertarian Party has ever sought exemption through legislation from the statutory prohibition on endorsements by central committees of candidates for its nomination in the primary election or has sought to change the statute which prescribed the term of the chairperson. There is evidence that someone caused legislation to be introduced in its name in the legislature to change other aspects of the statutes governing its structure and procedure (p. 17, *supra*).

Thus there is nothing in the record which would preclude drawing the inference concerning ballot-qualified parties, such as those affected by this litigation, that these parties intentionally forgo control of their own identity in order to become vehicles for running a stable and democratic California governmental system. The California electoral system is designed to produce such parties for just that purpose.

From the perspective of ideological purity and organizational coherence, ballot-qualified parties are in plaintiffs' view "weak" parties. However, the minimal amount of power perceived by plaintiffs to reside in party organizations, which it is the avowed purpose of plaintiffs to remedy through this litigation, is not attributable to the statutory prohibition on endorsements by party central committees[10], the prescription of the composition of state central committees and limitation of the terms of the chair-

10. Plaintiffs' own declarant provides research indicating that an overwhelming majority of voters do not believe that endorsements of candidates by their party organizations is meaningful and don't give them any weight in deciding for whom to vote in the party primary. (p. 20, *supra*.)

persons. There are much more pervasive and momentous social and technological factors, such as television and computerized public opinion polls, which explain the "decline" of official party organizations noted throughout the nation. Arthur M. Schlesinger, Jr. concludes:

> "One thing is clear: we will not attain a working political system simply by fiddling with party rules and structure, nor by trying to reclaim a vanished past through act of will. We will attain it only by remembering that politics in the end is the art of solving substantive problems."[11]

Even if plaintiffs are ultimately successful in persuading their parties that they should change their nature from a vehicle for governance to ideological faction, as long as they choose to persist as ballot-qualified parties California has vital interests that are served by insisting that central committees not endorse candidates for their party's nomination in the state's primary election and that

11. *The Cycles of American History*, Chap. Ten, "The Short Happy Life of American Political Parties", (Houghton Mifflin 1986) pp. 256-276 at 276. At pp. 272-273 Professor Schlesinger states:

> "The electronic age threatens the withering away of the traditional political party. Can the party system be saved?
>
> "Political scientists propose structural remedies: formal party membership; midterm party conferences; local party caucuses; binding party discipline and accountability; in short, the revitalization of the party through stronger rules and regulations. I must confess skepticism. The effort is to call the old parties from the vasty deep. It is not likely that they will come when we do call for them, even with the incantations of rules and regulations. Proposals to centralize the parties run against the historical grain of American politics as well as against the centrifugal impact of the electronic age. Actually some of the much-abused reforms have already given the parties new institutional and financial strength as national organizations. Yet, for all this, the party continues to decay as a force in politics. Carried too far—the mid-term party conference, for example—efforts to discipline the party only speed up the process of dissolution."

rules regarding structure and organization of the party central committees be subject to review and ratification by the state legislature.

Once they have disbanded their parties as ballot-qualified or initiated new parties, California provides means for such parties to qualify their candidates for office in the general election which do not involve state regulation of their activities as political parties.

II

CALIFORNIA'S INTEREST IN PRESERVING ITS PARTISAN PRIMARY ELECTION SYSTEM TO PROMOTE STABLE AND DEMOCRATIC GOVERNMENT OVERRIDES PLAINTIFFS' INTERESTS IN HAVING THEIR PARTY ORGANIZATIONS FREE TO ENDORSE CANDIDATES FOR THEIR NOMINATIONS AND TO DETERMINE THEIR MEMBERSHIP AND THE TERMS OF THEIR CHAIRPERSONS WITHOUT REVIEW AND RATIFICATION BY THE LEGISLATURE.

As the opinion of the Court of Appeals in this case notes, at the turn of this century California adopted a direct primary election system "which transferred the power to nominate candidates from party organizations to the voters themselves." (826 F.2d at 819)

The system is "closed" in the sense that only voters who are officially registered with state election agencies as being affiliated with a particular party may vote the ballot of that party in the primary election conducted by the state for the nomination of the party's candidates for partisan office. (Cal. Elec. Code § 501) The candidate who receives the most votes in the primary election conducted for a party for a particular office is the only candidate who may be designated on the general election ballot as the candidate of that party for that office. (Cal. Elec. Code § 6610)

In *Storer v. Brown*, 415 U.S. 724, 735-736 (1974) this Court held that California could prohibit a candidate defeated in a party primary from qualifying as an independent to run against the party nominee in the general election in order to enhance the stability of the ballot-qualified parties in the general election in furtherance of the state's interest in having the general election result in state officers who have sufficient support to govern effectively.

However, the state does not conduct primary elections for all political parties. Only those parties which meet criteria of demonstrable support among the voters of the state are eligible to have their nominating elections conducted by the state. (Elec. Code § 6430)

Political parties may choose not to avail themselves of the state-conducted primary elections to select their candidates for office. The state provides these parties with other means of placing their candidates on the general election ballot although the candidates' party affiliations do not appear on the ballot. Such parties are not subject to regulation by the state as political parties.

Voters are not required to declare their affiliation with a political party as a condition of voting in the general and non-partisan elections even if they are in fact affiliated with a political party. (Elec. Code § 501) A party whose members do not register with state election agencies as being affiliated with it does not qualify to have its nominating elections conducted for it by the state unless the party petitions the Secretary of State and makes a special showing of support among the electorate. (Elec. Code § 6430, subds. (b) and (c))

When a party chooses to become ballot-qualified it and its adherents loose their ability to determine who may be affiliated with them. In exchange for the state conducting the nominating elections for a political party, the state requires that all voters who choose to officially affiliate with the party be eligible to vote in the party's primary election (Elec. Code § 10200.5) and, with a demonstration of support from other such members of the party, become a candidate for the party's nomination in the primary election (Elec. Code §§ 6495 & 6501).

Thus, a party which chooses to become ballot-qualified agrees to become a potential "umbrella" party and can fairly be said to aspire to that status by virtue of its choice to become ballot-qualified. California uses its electoral system to promote the existence of "umbrella" parties in furtherance of its interest in the stability of its political system because such parties are an effective device for mitigating "unrestrained factionalism [which] may do signifcant damage to the fabric of government" (*Storer v. Brown*, 415 U.S. 724, 736 (1974)).

The manner in which "umbrella" parties perform this function has been described in terms of the national Democratic and Republican parties (A. Ranney, *Curing the Mischiefs of Faction* 201 (1975)):

> "[E]ach party has sought winning coalitions by attempting accommodations among competing interests it hopes will appeal to more contributors and voters than will the rival accommodations offered by the opposition party. This strategy, it is conceded has resulted in vague, ambiguous, and overlapping party programs and in elections that offer the voters choices between personalities and, at most, general programmatic tendencies, certainly not unequivocal choices between sharply different programs. But this . . . is not a vice but a virtue, for it has enabled Americans through all but one era of their history to manage their differences with relatively little violence and to preserve the world's oldest democratic regime."

As Ranney's analysis indicates, parties which aspire to "umbrella" status will be inclined to conduct their activities in a manner which contributes to the state's interest in stable government. Such parties will tend to have a coincidence of interest with the state and will therefore willingly and knowingly seek access to the primary election ballot for the very reasons that the state offers that opportunity. (See, Scott and Carr, "Political Parties Before the Bar: The Controversy Over Associational Rights", 5 Univ. of Puget Sound L. Rev. 267, 276-279 (1982).)

In opting to participate in the primary election as it exists in California, a party knowingly and willingly surrenders its prerogative to determine its own membership and in effect chooses to permit its identity to be determined democratically by vote of all persons who simply officially associate with it for whatever reason (Scott and Carr, *supra*, at 278:

> "Thus, the primary election provides insight into the policy objectives of the party as a whole. Party candidates for elective office are presumed to represent the wishes of the majority of the party on a wide range of political issues. These candidates, in other words, are not just candidates for elective office in the general election; from the standpoint of intra-party politics, they represent the party position on issues that concern party identifiers."[12]

In effecting this result, the primary election system not only promotes the state's interest in the stability of its governmental system but the related and, as this Court has recognized (*American Party of Texas v. White*, 415 U.S. 767, 781, ftn. 15 (1974), separate interest in the "democratic management of the political party's internal affairs").

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12. The Court of Appeals attached great significance to the fact that state legislators had substantial representation on state central committees of their parties, suggesting to it that the legislators effectively controlled the committees, which were therefore in some unexplained way unrepresentative of their parties. (826 F.2d at 820, 824, 827, 828.) The composition of the Democratic State Central Committee was used as the example. (Id.) There are 1700 members of that Committee. (Kelly decl., M.A.D. 66a) Assuming that all seats in the legislature were held by Democrats (they hold approximately 60%), the legislators could occupy and appoint a total of 400 memberships. It is completely unrealistic to assume that the legislators will vote as a block on any issue and even if they did they could be out-voted 4-1. Defeated nominees of the party also occupy seats and make appointments. (826 F.2d at 820) Together with the legislators they would account for approximately 400 seats and could be out-voted 4-1. However, even if they occupied every seat on the state central committee they could hardly be deemed unrepresentative of the state party.

These interests of the state and the self-interest of political parties which aspire to the status of an "umbrella" party coalesce and coincide in California's closed primary system and its implementing statutes which affect the ballot-qualified political parties. These statutes manifest the symbiotic relationship between ballot-qualified political parties and the state.

The evolution of the statutory ban on endorsements by central committees of ballot-qualified parties of candidates for their parties' nominations in the primary election (Elec. Code § 11702) illustrates the coincidence of interest and symbiotic relationship between the state and ballot-qualified parties.

Prior to the adoption of a primary election system in California around the turn of the century, the major political parties prohibited their central committees from endorsing candidates for their parties' nominations at their conventions. (J.S.App.II 142-3) The reason for this prohibition was that the committees organized and put on the party nominating conventions so that official endorsements by the committees would impair the legitimacy and credibility of the conventions and the candidates chosen thereby in the eyes of backers of losing candidates with obvious negative effects on the party's prospects in the general election. (J.S.App.II 146-7)

After the advent of the primary election system, the central committees existed primarily to carry on their *parties'* campaigns in the general election for their candidates chosen at the primary election. (J.S.App.II 145-6) This role of the central committees was valuable to the parties because it provided a vehicle for securing resources for the election of the nominees available from candidates who were defeated in the primaries and their backers which might not otherwise be available directly to the nominees themselves. (J.S.App.II 107-8) The prohibition on endorsements of candidates by central committees continued to be the practice of the California Republican and Democratic parties because such activity could impair or preclude the effectiveness of the central committees in their role as catalysts of party cohesiveness for the general election. (J.S.App.II 107-10; J.A. 63-65)

Eventually the existence of party central committees was established in statutes which recognized that virtually their only function was to conduct their parties' campaigns for their nominees in the general election. (J.S. App.II 144) The prohibition on endorsements continued as a matter of the policy and practice of the parties and was viewed by state officials and party organizations as being consistent with the primary election system and the best interests of the parties. (J.S.App.II 107-10)

The policy of the ban on endorsements by central committees was not expressly adopted by statute until 1963 when it was enacted as part (§ 11702) of the Truth in Endorsements Law. (Elec. Code, § 11700 et seq.) This statute prohibits publications appearing to endorse candidates for the nomination of a ballot-qualified party in primary elections that utilize identifying words contained in the name of the party unless a prescribed statement that the "endorsement hereon is by an unofficial political group" appears on or in the endorsement publication. (Elec. Code §§ 11703-5, 11708-9)

The statute was enacted to combat a widespread practice of particular organized factions within the ballot-qualified parties of publishing slates of endorsements which misled voters into believing the endorsements had been made by official party organizations. (Elec. Code § 11701(3)) This practice is considered a fraud because in California the primary election is the means the ballot-qualified parties have chosen to "endorse" their candidates and pursuant to that choice central committees of such parties had never endorsed candidates for their parties nominations. (See, *People v. Crutcher*, 262 Cal.App. 2d 750, 752-753; 68 Cal.Rptr. 904 (1968).)

The California Democratic and Republican parties had witnessed the evolution of unofficial associations of party members, such as the California Democratic Council (CDC) and the California Republican Assembly (CRA),

for the purpose of making endorsements in the primary elections, their identification with well organized ideological factions within the parties and the detrimental effect that identification had on the fate of the parties' nominees in the general election. (See, *Dancing Bear: An Inside Look at California Politics, by Gladwin Hill,* (World Publishing Co. 1968) pp. 160-161, 211-212, 217-218, 248, 252, 254-255.)

The introduction of such a dynamic into the central committees was and is clearly perceived by the parties as inconsistent with and destructive of the role of the central committees and of the parties (*Dancing Bear, supra,* at pp. 160-161):

> "As the purported voice of party rank-and-file, serving as a power base for office-seekers and office-holders, the CDC claimed the right to a major role in formulating party policy. This pretension quickly became a bugbear, both to the party's 'legal' hierarchy, concerned with unifying a membership that extended far beyond the 50,000 CDC activists, and to the office-holders. For an office-holder, CDC pronouncements tended to commit him to controversial positions and reduce his most valuable asset as a politician-the flexibility to maneuver."

Appellants believe that the Democratic and Republican parties manifested in both the offici organizations and in the Legislature caused the Truth and Endorsements Law, including the ban on endorsements by central committees, to be enacted to enable the parties to enforce their own policies as to proper methods of determining their identities.[13] Such policies probably could not have been enforced by the party and its members in state court in the absence of the statutes. (Cf. *Malone v. Superior Court,* 40 Cal.2d 546, 551-552; 254 P.2d 517, 520 (1953).)

In causing enactment into statute of the restriction of party members to one official nominating act—their vote

13. The defendants timely requested the opportunity pursuant to Rule 56 (f), Fed.R.Civ.P., to conduct discovery on this issue which was denied by the District Court. (pp. 21-25, 28, *supra*.)

in the primary election—the parties invoked the state's interest " 'of confining each voter to a single nominating act' " (*Tashjian, supra,* 107 S.Ct. 544, ftn. 13 at 554). This state interest is directly related to its interests in the stability of its political system and in the democratic management of its political system of ballot-qualified political parties (*American Party of Texas v. White, supra,* 415 U.S. at ftn. 15, p. 783; see also, Scott and Carr, *supra,* at 279) which are inherent in its direct primary election system.

The parties have also caused the portions of the by-laws of their state central committees pertaining to the composition of those committees and the terms of their chairpersons to be enacted into law. (J.S.App.II 106) The existence of these statutes enables the party and its membership to enforce the by-laws in state court as noted *supra* at p. 54, to settle credentials disputes. Utilization of a neutral arbiter of credentials disputes mitigates potential divisiveness within the state central committee which could interfere with its role in uniting the party for the general election. Th parties' interests in stability coincide with the interests of the state.

The statutes concerning the structure of the state central committees reflect the by-laws of those committees and are enacted as requested by a party represented in the Legislature without interference from the other party as a matter of comity and custom. (J.S.App.II 106) The statutes regarding the composition of the state central committees of the different parties vary significantly in accordance with the by-laws of each committee although they follow a similar pattern. (J.S.App.II 149-231) The pattern is of some system for assuring that the full spectrum of significant groups of adherents to the party are represented in order to maximize cooperation among these groups in supporting the parties' candidates in the general election.

The provisions regarding the terms of the chairpersons of the state central committees have a similar fea-

ture which reflects the state central committees' accommodations in their by-laws to a perennially transcendent phenomenon in California politics (*Dancing Bear, supra,* at 23-24):

> "Only nine years after California embarked on statehood, the problems of holding it together as a state seemed insuperable. The legislature voted to separate its northern and southern portions into two states, and enactment was duly signed by Governor John B. Weller on April 19, 1859. Only Congress' preoccupation with the impending Civil War prevented the necessary Federal ratification. And to this day the essential existence of two Californias, northern and southern, is formally recognized in a number of state laws drawing explicit sectional distinctions."

Each of them alternates the occupancy of the chair between representatives of Northern and Southern California (Elec. Code §§ 8774, 9724 and 9816) in the interests of avoiding sectional identification of the party and unnecessary conflict within the committee which could impede its role of unifying the party for the general election. The limitation on the term assures that the rotational system will occur with sufficient regularity to prevent regional friction from reaching a "critical mass."

This interest of the parties coincides with the state's interest in promoting by statute the duty of the state central committees to carry out their parties' campaigns for their nominees in the general election.[14] The imposition of this duty by statute is not challenged in this litigation. (Cf. *Marchioro v. Chaney,* 442 U.S. 191, 196-197 (1979).)

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14. The state central committees are mandated by statute to "conduct campaigns for this party and in behalf of the candidates of the party" and this is virtually the sole duty mandated by statute to these committees. (Elec. Code §§ 8775 and 8940 (Democratic Party); 9276 and 9440 (Republican Party); 9688 and 9740 (American Independent Party); 9819 and 9850 (Peace and Freedom Party). Elec. Code §§ 8940, 9440, 9740 and 9850 mandate county central committees in similar language:

> "A committee shall have charge of the party campaign under general direction of the state central committee or of the executive committee selected by the state central committee."

The invalidated statutes apply only to ballot-qualified parties and exist to promote the compelling interests which underlie the state's primary election system. Ballot-qualified parties have essentially chosen that status and the state regulations associated with it as being in their best interests.

California permits political parties to avoid that status and the associated regulation but still qualify its candidates for the general election ballot through independent candidacies (Elec. Code § 6400 et seq.) or write-in procedures (Elec. Code §§ 17100-1). There is no requirement in the U.S. Constitution that a state elect its governmental officials through methods other than these.

When a state chooses to conduct nominating elections for political parties and provide automatic access to and identification on the general election ballot for candidates of the parties, it may establish conditions to this privilege so long as the conditions do not invidiously discriminate among the political parties. (*American Party of Texas v. White, supra,* 415 U.S. at 780-1) Since the invalidated statutes operate in the same manner with respect to any party which chooses to become ballot-qualified, such a consideration would not be present in this case.

It is the choice of the party whether its interests are best served through participation in the state's primary election system with its associated regulation of ballot-qualified parties or through use of the other methods available to qualify its candidates for the general election ballot which keep it free of state regulation.

Thus, it is not California's purpose in maintaining the challenged statutes to "protect the parties from themselves", as the Connecticut statute invalidated in *Tashjian* attempted to do, rather it is to implement its primary election system to enhance its vital interest in stable and democratic government which this Court reaffirmed in *Tashjian* is a valid and overriding interest.

As is apparent from the fact that political parties with such diverse messages and programs as the Libertarian, Peace and Freedom (Cal. Elec. Code § 9750) and American

Independent (Cal. Elec. Code, § 9600) parties have been ballot-qualified in California, its regulation of such parties as challenged in this litigation does not affect the content of their messages and programs. It is equally apparent from its inability to cite to the record but only to "commentators", another lower court decision relying on the same sources and its own speculation, that the Court of Appeals' conclusion that the challenged statutes "inevitably color[] the message that the parties communicate to the electorate" has no support in the record of this case or in proven fact subject to judicial notice.

Since California has an overriding interest in the challenged statutes which have not been shown to affect the actual message and program of political parties implicated in this litigation, the statutes don't impermissibly burden the First Amendment rights of those parties or of the plaintiffs herein associated with them.

Moreover, when a party chooses not to become ballot-qualified or to withdraw from this status because it does not deem compliance with such statutes to be in its best interests, it is not being deprived of a benefit by refusal to forgo a right protected by the First Amendment which is prohibited pursuant to *Perry v. Sinderman*, 408 U.S. 593, 597 (1972) and *Speiser v. Randall*, 357 U.S. 513, 526 (1958).

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals affirming the judgment of the District Court should be reversed with instructions to remand to the District Court for entry of judgment in favor of defendants.

DATED: July 1, 1988.

Respectfully submitted,

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QUESTIONS PRESENTED

I. Does the First Amendment prevent a state from stripping political parties and their central committees of the right to endorse candidates in primary elections?

II. Does the first amendment right of freedom of association preclude a state from dictating the leadership and membership of a political party's central committee?

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No. 87-1269

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1987

MARCH FONG EU,
Secretary of State of the State of California, et al.,
Appellants,

vs.

SAN FRANCISCO COUNTY
DEMOCRATIC CENTRAL COMMITTEE, et al.,
Appellees.

On Appeal From The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR APPELLEES

STATEMENT OF THE CASE

This is an appeal from the entry of summary judgment invalidating various provisions of California's Elections Code on first and fourteenth amendment grounds.

Plaintiffs-Appellees ("plaintiffs") are seven county central committees of the California Democratic and Republican Parties and their chairs, the state central committee of the California Libertarian Party and its chair, and other organizations and individuals active in California politics.[1] These diverse organizations and individuals represent a wide range of political orientations. The members of this coalition are united in their beliefs (1) that political parties are an essential element of American

[1] All plaintiffs are named in the caption.

democracy and (2) that certain provisions of the California Elections Code deprive political parties and their members of the rights of political speech and association guaranteed by the First and Fourteenth Amendments. (II App. a-251 to a-254, First Amended Complaint, ¶¶ 26-34).[2]

Because of these beliefs, plaintiffs challenged the offending provisions of the Elections Code in an action filed in the United States District Court for the Northern District of California on November 17, 1983.[3] The first amended complaint alleged three causes of action, two of which are presented on this appeal.[4] The

[2] As used herein, "DC Item" identifies documents according to their District Court docket numbers; "CA [date]" identifies documents according to the date listed in the Court of Appeals' docket sheet; "I App." refers to Volume I of the Appendix to the Jurisdictional Statement; "II App." refers to Volume II of the Appendix to the Jurisdictional Statement; "Add." refers to the Addendum to Plaintiffs' Motion to Affirm or to Dismiss; "J.A." refers to the Joint Appendix; and "Op. Br." refers to Appellants' Opening Brief.

[3] A first amended complaint was filed on December 5, 1983. (II App. a-243). Defendants Eu, Van de Kamp, Smith, and Himmelsbach (collectively "appellants") answered on December 15, 1983. (DC Item 6). Separate answers were filed by defendants who have chosen not to join in this appeal. (*See* DC Items 7-8, 11-12).

[4] The District Court abstained on the second cause of action, which challenged state law restrictions on the right of political parties to endorse candidates in nonpartisan school, county, or municipal office elections, in light of the pendency in the California Supreme Court of an appeal presenting similar issues. The California Supreme Court ultimately decided that state law did not prohibit such endorsements. *Unger v. Superior Court*, 37 Cal. 3d 612, 692 P.2d 238, 209 Cal. Rptr. 474 (1984).

A ban on nonpartisan endorsements was subsequently enacted by ballot initiative in June 1986. This ban, in turn, is the subject of further litigation in the federal courts. As of this date, the initiative has been ruled unconstitutional under the First and Fourteenth Amendments to the United States Constitution by the Honorable Alfonso J. Zirpoli of the Northern District of California. (*See Geary v. Renne*, No. C 87 4724, Order Granting Partial Summary Judgment at 3-5 (N.D. Cal. April 27, 1988)).

first cause of action challenged California's prohibition of primary endorsements by party central committees. The third cause of action challenged the state's interference with the parties' internal affairs—including its determination of the composition of the state central committees and the terms of the party chairs.

I

THE SUMMARY JUDGMENT MOTIONS

On April 9, 1984, the District Court heard oral argument on cross-motions for summary judgment and a motion to dismiss filed by appellants. In support of the summary judgment motion granted below, plaintiffs filed 28 declarations from the then-chairs of each plaintiff central committee, prominent political scientists, and elected officials within and without California.[5] As discussed more fully below, plaintiffs' declarations detailed the extraordinary burdens the challenged statutes placed upon plaintiffs' first amendment rights.[6] In opposition to plaintiffs' summary

[5] Some of these declarations are reproduced in the Joint Appendix (at 79 to 129) and in the Addendum to Plaintiffs' Motion to Affirm or to Dismiss.

[6] *See infra* Parts I.A and I.B. Contrary to appellants' assertion that the challenged statutes reflect the policies of the parties (Op. Br. 34- 40), plaintiffs' declarations in support of summary judgment demonstrate that the parties are fundamentally opposed to Elections Code regulation prescribing the composition of their state central committees and prohibiting their ability to endorse candidates in primary elections. As the Court of Appeals found, these declarations establish that the plaintiffs "would reform the composition of their parties' central committees if the statutes were invalidated," and "would make primary endorsements if the practice were not prohibited." (I App. 23a). That finding is amply supported by the record below. (*See, e.g.*, Add. 2a-3a, 6a-7a, Christman Dec., ¶¶ 2-5, 13-15; Add. 11a, Coffey Dec., ¶ 4; Add. 37a-39a, 41a, King Dec., ¶¶ 2-6, 12; Add. 46a-48a, 51a, Post Dec., ¶¶ 2-6, 14; Add. 57a-59a, Romero Dec., ¶¶ 2-9).

Appellants misleadingly suggest that the District Court erred in failing to allow discovery into whether the Democratic and Republican Parties originally "caused" the enactment of the challenged Elections Code provisions. (Op. Br. 46 n.13). The Elections Code provisions

judgment motion and in support of their cross-motion for summary judgment, appellants submitted only one declaration—from former State Senator Albert Rodda—that purported to address the first amendment issues. (J.A. 60). As both the District Court and the Court of Appeals noted, Senator Rodda's declaration "consists of 'opinions . . . not based on facts, but on speculations.' " (I App. 43a; II App. a-55). The Rodda declaration failed to controvert plaintiffs' numerous declarations describing the impact of the challenged Elections Code provisions on political parties or to raise any genuine issue of material fact. (I App. 44a).

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challenged below were enacted, for the most part, in the early 1960s. *See, e.g.*, Cal. Stats. 1963 ch. 1108, p. 2574 (enacting predecessor to Cal. Elec. Code § 11702); Cal. Stats. 1961 ch. 23, p. 705 (enacting predecessor to Cal. Elec. Code §§ 8660, 9160); Cal. Stats. 1967 ch. 1651, pp. 3959-70 (enacting separate regulations for Democratic Party); Cal. Stats. 1967 ch. 1651, pp. 3970-82 (enacting separate regulations for Republican Party). Counsel's declaration under Rule 56(f) of the Federal Rules of Civil Procedure was limited to a request for discovery regarding plaintiffs' authority to bring suit and "written communications in the *past five years* . . . regarding the issues raised in this litigation." (II App. a-120 to a-121, Graybill Dec., Exh. A (emphasis added)). On its face, that request was not calculated to lead to the discovery of the historical position of California political parties with respect to the challenged Elections Code provisions.

In any case, the parties' original support for or opposition to the legislation is not at issue here. It is undisputed that the plaintiff party committees and party members currently oppose these legislative enactments.

To the extent that appellants sought discovery regarding plaintiffs' authority to bring suit, both the District Court and the Court of Appeals held that the authorization issue had been waived. (I App. 19a n.17; II App. a-75). Furthermore, plaintiffs submitted one or more declarations from the chair of each plaintiff central committee, copies of committee bylaws, and relevant excerpts of committee minutes, all attesting to authorization. *See* sources cited *infra*, notes 16 and 17. The District Court made an express finding, affirmed by the Court of Appeals, that "the plaintiff central committees and each of them have authorization and capacity to bring and maintain this litigation." (I App. 19a n.17; II App. a-76).

A. Statutes Banning Primary Endorsements

By their first cause of action, plaintiffs sought vindication of their right to endorse, support, or oppose candidates for nomination in direct party primary elections. (II App. a-255 to a-264). They were prohibited from doing so under California Elections Code section 11702, enacted in 1963, which provides that the "state convention, state central committee, and the county central committee in each county shall not endorse, support, or oppose, any candidate for nomination by that party for partisan office in the direct primary election." (II App. a-302). In addition to the statutory restriction on endorsements, Elections Code section 29430 makes it a misdemeanor for any person to "claim on . . . behalf [of a candidate for nomination of a political party for partisan office], that he or she is the official candidate or the officially endorsed candidate of such political party." (II App. a-303). As numerous commentators have pointed out, these restrictions on primary endorsements are unique to California.[7]

Plaintiffs' declarations demonstrated that, by prohibiting the issuance of primary endorsements by the parties, section 11702 has prevented the parties from educating the public regarding the candidates' positions and has engendered serious voter confusion. (*See* Add. 3a-4a, 5a, Christman Dec., ¶¶ 6, 9-10; Add. 38a, King Dec., ¶ 5; Add. 47a-48a, 49a-50a, Post Dec., ¶¶ 6, 9-10; Add. 57a-58a, Romero Dec., ¶ 4).

One of the major functions of political party organizations is to educate voters about candidates. (J.A. 124, Burns Dec., ¶ 10; J.A. 120, Bone Dec., ¶ 7; J.A. 101-02, Lee Dec., ¶ 11). The endorsement of the official party organization provides voters with valua-

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[7] Weisburd, *Candidate-Making and the Constitution: Constitutional Restraints on and Protections of Party Nominating Methods*, 57 S. Cal. L. Rev. 213, 271-72 n.343 (1984). Florida used to forbid such endorsements, but its statute was held to violate the First Amendment in *Abrams v. Reno*, 452 F. Supp. 1166, 1171-72 (S.D. Fla. 1978), *aff'd*, 649 F.2d 342 (5th Cir. 1981), *cert. denied*, 455 U.S. 1016 (1982). Eight states actually *require* parties to issue endorsements before the primary. Advisory Commission of Intergovernmental Relations, *The Transformation in American Politics: Implications for Federalism* 148 (1986).

ble information that is more dependable than the endorsement of any individual or single-issue group. (J.A. 125, Burns Dec., ¶ 12; J.A. 101-02, Lee Dec., ¶ 11). Voters often ask plaintiffs for the official party position in regard to primary candidates. (Add. 58a, Romero Dec., ¶ 5). Nevertheless, voters are not unduly influenced by such endorsements and continue to make independent choices. (J.A. 86, Fraser Dec., ¶ 10; J.A. 98, Jewell Dec., ¶ 17; Add. 12a, Coffey Dec., ¶ 6).[8]

According to the declarations of political leaders, voters want to know if a party endorses a candidate because such endorsements tell them whether a candidate adheres to the general positions of that party. Party endorsements also inform the electorate that an official political party organization, composed of well-informed, like-minded, and interested individuals, has evaluated the qualifications of a particular candidate and has found them to be superior. (J.A. 124, Burns Dec., ¶ 10). In this way, party endorsements serve as invaluable guides to voters who do not have the time or resources to get to know the candidates as well as the members of the official party organizations do. (*Id.*; J.A. 80, 81, Fay Dec., ¶¶ 3, 6; J.A. 106, Marchioro Dec., ¶ 5; DC Item 41, Layson Dec., ¶ 2).

The ban against primary endorsements has precluded the parties from recruiting or developing candidates for office, and has severely hindered their ability to attract talented and interested people. (J.A. 124, 125, Burns Dec., ¶¶ 9, 13; *see, e.g.*, Add. 10a-11a, Coffey Dec., ¶¶ 2-3; Add. 38a-39a, King Dec., ¶ 6; Add. 43a-44a, Supp. Layson Dec., ¶¶ 4-6). As a practical matter, the

[8] In a careful study of party gubernatorial endorsements in direct party primaries in five separate states, Political Science Professor Malcolm Jewell of the University of Kentucky found that these endorsements had no undue impact on voters. (J.A. 96-98, Jewell Dec., ¶¶ 10-17). His research clearly refutes the implication that party endorsees automatically win the primary. Mayor Edward Koch of New York, the 1982 Democratic gubernatorial endorsee in New York, lost the Democratic primary to Mario Cuomo, the second time in the last four primaries that the Democratic gubernatorial endorsee had lost. (J.A. 97, *id.*, ¶ 11). Gubernatorial endorsees in Massachusetts and Minnesota also lost their 1982 primary races. (J.A. 97, *id.*, ¶¶ 12-13).

parties are effectively prohibited from participating in the early phases of *any* particular candidacy. Plaintiffs' declarations establish that this limitation is particularly harmful when no candidate has entered the party primary; because the party is not free to recruit a candidate, voters are left without a meaningful choice in the general election. (Add. 3a-4a, Christman Dec., ¶ 6).

The voter confusion that has been created by prohibiting primary endorsements by official party organizations is illustrated by the 1980 campaign of Tom Metzger in the San Diego Democratic Congressional primary. Mr. Metzger won the primary election, and thus the Democratic nomination, even though he was a Grand Dragon of the Ku Klux Klan and stood for policies abhorrent to the Democratic Party and its members. (Add. 15a, Costantini Dec., ¶ 2). Section 11702 prevented the party from advocating the candidacy of a more representative Democrat, informing the voters of Mr. Metzger's radical ideology, or arguing to the electorate that his program and ideas should be rejected. (*Id.*)

The ban on primary endorsements also hinders the parties' attempts to promote party members' shared political beliefs. Deprived of the right to endorse and to speak out, the parties are left with no means by which to hold public officials accountable to party membership. (J.A. 85, Fraser Dec., ¶ 5; J.A. 92, Hudson Dec., ¶ 6). As a consequence of the parties' resulting weakness, wealthy individuals and special interest groups exert a disproportionate amount of influence and control over elected officials. (Add. 11a, Coffey Dec., ¶ 3).

Members of county central committees, including plaintiffs, associate together in order to advance shared political beliefs. (*See, e.g.*, Add. 50a, Post Dec., ¶ 12; Add. 40a, King Dec., ¶ 10; Add. 6a, Christman Dec., ¶ 12). They join the county central committees and state central committees intending to combine their efforts and to work together for common political purposes. (*See, e.g.*, DC Item 43, Mack Dec., ¶ 8). Political scientists agree that one of the political organizations' few effective tools to accomplish these goals is the right to comment on the qualifications of candidates. (J.A. 120, Bone Dec., ¶ 7; Add. 50a, Post Dec., ¶ 12). Yet, neither the county central committees nor the

state central committees can speak out on behalf of candidates in direct party primaries.

By preventing plaintiffs from participating in the process of choosing party nominees, a task this Court has recognized as "a basic function of a political party [in our system]," *Kusper v. Pontikes*, 414 U.S. 51, 58 (1973), the state has deprived the committees of their ability to perform their most important functions, thereby draining them of vitality and effectiveness. (Add. 3a, Christman Dec., ¶ 6; Add. 10a, Coffey Dec., ¶ 2; Add. 20a, Supp. Costantini Dec., ¶ 8; Add. 25a, Gingell Dec., ¶ 4; Add. 44a, Supp. Layson Dec., ¶ 7; J.A. 101-02, Lee Dec., ¶¶ 10-11; J.A. 125, Burns Dec., ¶ 13).

B. Statutes Prescribing the Membership and Leadership of the State Central Committees

By their third cause of action, plaintiffs sought the restoration of their right to structure and conduct internal political party affairs without intrusive and burdensome state interference. (II App. a-276 to a-282). Among other restrictions challenged in the third cause of action are Elections Code provisions governing the composition and method of selection of the state central committees, the length of the state central committee chairperson's term of office, and the requirement that the chair alternate between northern and southern California. (II App. a-277 to a-280). Violations of these provisions are subject to criminal prosecution. Cal. Elec. Code § 29102 (II App. a-303). Plaintiffs' declarations established that the statutes are contrary to rules they would have adopted absent legislative interference. Moreover, efforts to persuade the legislature to adopt rules responsive to the parties' perceived needs were unduly burdensome or unsuccessful.

Both the California Democratic[9] and Libertarian Parties have attempted unsuccessfully to obtain amendment of the challenged restrictions on internal party governance. (Add. 12a-13a, Coffey

[9] Although not a named plaintiff, the California Democratic Party has been on record since December 1984 as being fully supportive of all three causes of action and has indicated its intention to join the litigation at the earliest available opportunity. (Add. 30a, 32a-35a, Kelly Dec.,

Dec., ¶¶ 7-9; Add. 25a-26a, Gingell Dec., ¶¶ 5-6). In addition, all plaintiff county central committees, which include representative Democratic and Republican county central committees, are on record in opposition to the Elections Code provisions challenged in the third cause of action. (I App. 23a).[10]

For example, when the Libertarian Party became a "qualified party" under the Elections Code in 1980, entitled to participate in primary elections, it was forced to choose an organizational system already established for one of the other qualified parties.[11] (Add. 25a-26a, Gingell Dec.,[12] ¶ 5). Instead of organizing by regions, as it had done since its founding in 1972, the Libertarian Party was forced to organize by county. (*Id.*) The party had to "establish a totally new statewide organization that differed from [its] preferred and natural party structure." (*Id.*) The Libertarian Party tried unsuccessfully to persuade the state legislature to enact legislation specifically tailored to the party's organizational needs. In 1981, a bill that would have accomplished that goal was defeated in the Assembly Elections Committee. (Add. 26a, Gingell Dec., ¶ 6).

¶¶ 7-9 & Exh. A; Add. 64a-65a, Supp. Kelly Dec., ¶ 5; CA 1.18.85, Letter).

[10] The only evidence proffered by appellants below or cited in appellants' Jurisdictional Statement—the Rodda Declaration (II App. a-105)—is not to the contrary. That declaration does not address *unsuccessful* efforts to change Elections Code regulation of political parties, or the unique problems of the Libertarian Party, but merely states that when legislative changes in the "structure and procedures of the major political parties" have occurred, they were enacted "at the request and with the concurrence of the party affected." (II App. a-106, Rodda Dec., ¶ 6).

[11] The Libertarian Party must adhere to the rules governing the Peace and Freedom Party. (Add. 26a, Gingell Dec., ¶ 5).

[12] The version of Mary Gingell's declaration in support of summary judgment reprinted in the joint appendix at J.A. 87-89 leaves out a phrase in paragraph 6, thereby making the last sentence seem nonsensical.

Similarly, the Democratic Party has long been dissatisfied with the state-imposed method of selecting its state central committee. (Add. 12a, Coffey Dec., ¶ 7).

> The Party was dissatisfied because the vast majority of State Central Committee members were party nominees and their appointees, leaving only a few seats for the County Central Committees. Time after time, however, the Legislature had rebuffed any effort to reform this unrepresentative system.

(*Id.*) In 1979, twenty years after the Democratic Party began lobbying for change (*id.*), the legislature finally agreed to modify the statute, but "they did so only after a protracted, hard fought battle and even then substantially deviated from the Party's proposal." (*Id.*, ¶ 8). The rules, as amended, "still do not provide for adequate representation of the County Central Committees on the Democratic Party's central policy-making body." (Add. 12a-13a, id., ¶ 8).

The Republican Party has also suffered under Elections Code regulation of its internal structure. About three-fourths of the members of the Republican State Central Committee, under the Elections Code, are individual nominees for partisan office and their appointees. (J.A. 115-16, Sturrock Dec., ¶ 9). The county central committee chairs and their appointees are allotted the few remaining seats. (*Id.*) The minimal role of the county central committees under this state-imposed structure is disproportionate to their importance within the party. (*Id.*) Nominees, particularly losing nominees, come and go. In contrast, the county central committees are ongoing organizations composed of the elected representatives of the party membership. (*Id.*) By depriving the county central committees of any significant representation on the Republican State Central Committee, the state has effectively blocked grass roots and local party input into the central policy-making body of the California Republican Party.

The Elections Code limitation of state central committee chairs to a single two-year term weakens the parties even further. As the Court of Appeals recognized, such restrictions burden the parties' first amendment rights by "impair[ing] the parties' ability to

commit their fortunes to experienced and successful leadership." (I App. 33a).

Plaintiffs' declarations demonstrated that when the state interferes in a party's internal affairs, "it impairs the ability of the party to function and hampers its ability to serve the needs of party members." (J.A. 86, Fraser Dec., ¶ 11; *see also* J.A. 125, Burns Dec., ¶ 14). The state is frequently unable to anticipate and provide for a party's particular needs. (J.A. 120, Bone Dec., ¶ 8). Indeed, as the Court of Appeals found, "the parties have become weak and fossilized" (II App. a-32) because the state requires them to follow rigid, statutorily-prescribed bylaws that are often contrary to their best interests and their chosen mode of internal governance. (Add. 15a-16a, Costantini Dec., ¶ 3; Add. 25a-26a, Gingell Dec., ¶¶ 5-6).

II
THE PROCEEDINGS BELOW

On April 16, 1984, the District Court granted summary judgment for plaintiffs as to the first cause of action and those portions of the third cause of action involving Elections Code regulation of the selection of state central committee members and the selection and terms of state central committee chairs.[13] The court denied appellants' cross-motion for summary judgment on those causes of action and their motion to dismiss the action on Article III grounds.[14] The District Court found that the bar against

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[13] The District Court granted plaintiffs' motion as to California Elections Code sections 8660, 8661, 8663-8665, 8667, 8669, 9160, 9160.5, 9161, 9161.5, 9162, 9163, and 9164, relating to the selection of state central committee members; sections 9274 and 9816, relating to the terms of the state central committee chairs; section 11702, restricting endorsements in partisan primary elections; and sections 29102 and 29430, imposing criminal sanctions for violations of these provisions. (II App. a-68 to a-70).

[14] Appellants sought to dismiss this action on the ground, *inter alia*, that there was no case or controversy, and they continue to assert that "the first amended complaint did not and could not properly allege defendants had threatened to enforce the challenged statutes against any

primary endorsements substantially burdened plaintiffs' rights to

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plaintiff." (Op. Br. 12). However, appellants have been unwilling or unable to give plaintiffs assurances to that effect. At the hearing on the motion for summary judgment, Judge Patel specifically inquired into the likelihood of enforcement of section 11702:

> The Court: Let me ask you about violation of 11702. The Central Committee of the city and county of San Francisco decides that there is a particular candidate they want to endorse in the direct primary, and despite the law to the contrary, based upon your assurances, of course, that they are not going to be prosecuted, they go ahead and endorse this candidate and let it be known through various kinds of brochures, communiques, whatever, that this particular candidate is being endorsed.
>
> And you are approached by a very vociferous opposing candidate, who is very unhappy about this, because they violated the law. You are not going to enforce that provision against the Central Committee? I guess what you are saying is that you are not going to bring an action to enjoin them or seek any permanent penalties against them?
>
> Mr. Graybill: Your Honor, pursuant to the Eleventh Amendment, the only thing that we are answerable for—
>
> The Court: I want an answer to my question.
>
> Mr. Graybill: The answer that I can give you is that we have not done so in the past. We do not view there being any criminal provisions involved here. Our attitude has been that it is primarily a statute protecting the rights of the individual party members that is available there. Without those provisions the party members themselves would not have a hook.
>
> The Court: That does not answer my question. Are you prepared to tell those members of San Francisco County Democratic Committee that if they endorse candidate X in the primary, and candidate Y comes and complains to you, that you are not going to seek to enjoin them from violation of the law?
>
> Mr. Graybill: You are asking a hypothetical question that I can't really answer. All I can do is point out to you what the history of our involvement is, what our attitude has been.

(J.A. 46-47). The court concluded that there was "no evidence before the court that defendants would not use their power to civilly enforce the

freedom of speech and freedom of association. The court stated: "There is no greater burden on the freedom of speech than an outright governmental prohibition of any kind of expression by the target group on a particular topic, as is the case here." (II App. a-54). After finding that the state had failed either to meet the "rational basis" test or to "adduce any interest even approaching a 'compelling' one" (II App. a-55), the District Court held that sections 11702 and 29430 of the California Elections Code violate the First Amendment of the United States Constitution and 42 U.S.C. section 1983. (II App. a-68).

The District Court also found that plaintiffs had demonstrated the substantial burden on their right to freedom of association insofar as the state regulated the selection of the members and the terms of the chairs of the state central committees. (II App. a-59). The court noted that the term of office of the chairpersons is "of a piece with the membership selection process itself" (*id.*), and held that "a party's selection of its governing bodies is protected by the First Amendment right of association." (II App. a-61). Finding that appellants had, once again, "failed to show anything approaching a compelling state interest in these restrictions" (*id.*), the District Court struck them down as violative of the First Amendment and 42 U.S.C. section 1983. (II App. a-69 to a-70).

On April 16, 1984, appellants filed their Notice of Appeal with the District Court and an Emergency Motion for Stay of Judgment with the Court of Appeals. (DC Item 85; CA 4.16.84). In their motion for a stay, appellants complained that the District Court had not made an explicit finding that the central committees had authorized participation in the lawsuit. The Court of Appeals remanded the action to the District Court for its findings on the matter. (CA 5.25.84).

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challenged provisions in the event of a violation." (II App. a-48 to a-49). Moreover, the court found that "[t]he declarations submitted by plaintiffs make clear that plaintiffs have refrained from exercising rights purported to be protected by the First Amendment, due to the existence of these statutes." (II App. a-49).

Although the District Court determined that "defendants are properly deemed to have waived the issue," having failed to raise it by specific negative averment (II App. a-75) or on summary judgment (II App. a-75 to a-76), the court nevertheless considered the merits of appellants' putative challenge. The court had before it the "uncontroverted declarations under penalty of perjury from each of the eight central committee plaintiffs stating authorization has been given and the method[15] by which it was given."[16] (II App. a-76 (footnote added)). The case was then

[15] For example, when the lawsuit was filed on November 17, 1983, committee chair Dolph Andrews had consulted with other members of the San Francisco County Republican Central Committee, had determined it to be desirable for the committee to join, and had authorized the committee's participation as to the second and third causes of action. (DC Item 69, Andrews Dec., ¶¶ 2-3). However, the members of the committee had not yet discussed participation in the lawsuit during a regular meeting. (DC Item 101, Exh. 18, Faulkner Dec., ¶ 3). On September 6, 1984, after the validity of this authorization was questioned, the full county central committee voted 18-6 to ratify the authorization and to continue participation in the lawsuit's second and third causes of action. (CA 10.16.84, Supp. Andrews Dec., ¶ 7; CA 10.16.84, Bacci Dec., Exh. 1).

Appellants misleadingly characterize the 1984 ratification of the 1983 authorization as an acknowledgement "that [the committee] had not previously authorized participation in this litigation." (Op. Br. 31). The real import of the committee's action was to reaffirm the committee's support for the lawsuit and its continued participation as a plaintiff in the second and third causes of action.

[16] Each of the plaintiff committees authorized participation in the lawsuit: the Alameda County Democratic Central Committee (DC Item 88, King Dec., ¶ 3; DC Item 101, Exh. 7, Minutes); the Los Angeles County Democratic Central Committee (DC Item 74, Wallace Dec., ¶ 3); the Placer County Democratic Central Committee (DC Item 89, Romero Dec., ¶ 3; DC Item 101, Exhs. 13, 14, 15, Minutes); the San Francisco County Democratic Central Committee (DC Item 72, Post Dec., ¶ 3; DC Item 101, Exhs. 2, 3, 4, Minutes); the San Francisco County Republican Central Committee (CA 10.16.84, Supp. Andrews Dec., ¶ 7; CA 10.16.84, Bacci Dec., Exh. 1); the Santa Clara County Democratic Central Committee (DC Item 71, Mack Dec., ¶ 3; DC Item 101, Exhs. 9, 10, Minutes); the Solano County Democratic Central Committee (DC Item 73, Rockwood Dec., ¶ 3); and the State Central Committee of the Libertarian Party of California (DC Item 70, Gingell Dec., ¶ 3; DC Item 101, Exh. 17, Minutes).

transferred back to the Court of Appeals, and the authorization issue was briefed there.[17] (CA 6.29.84, Appellants' Brief; CA 7.9.84, Plaintiffs' Memorandum). The Court of Appeals held that there was "no reason to disturb [the District Court's] rulings on appeal." (I App. 19a n.17).

[17] There is, contrary to appellants' insinuations, no genuine factual issue as to the committees' authorization of participation in this lawsuit. Appellants argue that the meeting minutes submitted by plaintiffs indicate that some committees did not authorize participation as to all of the causes of action that they joined. (Op. Br. 6, 31). Appellants claim that references in the minutes to "the lawsuit to allow parties to endorse in non-partisan elections" indicate that the Libertarian State Central Committee authorized participation in the second cause of action alone. (Op. Br. 6).

Appellants are mistaken. According to the sworn declaration of the Libertarian State Committee's chair, Mary Gingell, "[t]he resolution that was passed at the November 21, 1982 meeting . . . did not limit, and was not intended to limit, [the committee's] authorization to only the challenge against the statutes prohibiting endorsements in nonpartisan elections." (DC Item 119, Supp. Gingell Dec., ¶ 5). The phrase "the lawsuit to allow parties to endorse in non-partisan elections" was used in the minutes as an easy means to identify the lawsuit. (*Id.*, ¶ 6).

Toward the end of their Statement of the Case, appellants assert more generally that plaintiffs' exhibits "raised serious doubt that several purported central committees" had properly authorized participation. (Op. Br. 31). Appellants do not elaborate, nor do they proffer any support for this contention. Tellingly, appellants do not mention the supplemental declarations submitted by the chairs of the committees as to which these accusations were made during the proceedings below. (*See* DC Item 121, Supp. King Dec., ¶ 6 (the Alameda County Democratic Central Committee "properly authorized its participation in all three causes of action of this lawsuit"); DC Item 120, Supp. Romero Dec., ¶¶ 6-7 (the Placer County Democratic Central Committee authorized participation in the first and third causes of action, using the phrase "a suit which would end the restriction on primary endorsements" in the minutes as "an abbreviated method of identifying this lawsuit")).

The merits of the case were fully briefed six times in the Court of Appeals—first, on appellants' emergency motion for a stay of judgment pending appeal (CA 4.16.84, Motion for Stay; CA 4.18.84, Opposition), which was granted on April 24, 1984 (CA 4.24.84); second, immediately prior to oral argument, which was held on May 15, 1984 (CA 5.8.84, Appellants' Brief; CA 5.8.84, Plaintiffs' Brief); third, pursuant to the Court of Appeals' Order dated August 5, 1985, requesting supplemental briefs on the first amendment issues presented on appeal (CA 10.9.85, Appellants' Brief; CA 11.5.85, Plaintiffs' Brief; CA 11.18.85, Appellants' Reply Brief); fourth, following remand from this Court for reconsideration in light of *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 107 S. Ct. 544 (1986) (CA 3.12.87, Plaintiffs' Brief; CA 3.30.87, Appellants' Brief; CA 4.6.87, Plaintiffs' Reply Brief); fifth, on appellants' motion for rehearing and suggestion for rehearing *en banc* of the Court of Appeals' August 18, 1987 opinion reaffirming the entry of summary judgment (CA 9.15.87, Petition for Rehearing); [18] and sixth, on appellants' motion to stay issuance of mandate pending disposition of this appeal (CA 11.5.87, Motion for Stay of Mandate; CA 11.17.87, Opposition). The record on summary judgment has twice been subjected to probing review *de novo* by the Court of Appeals in the course of that process. [19]

The Court of Appeals found that the challenged statutes "attach[ed] unconstitutional conditions to a party's right of access to the ballot." (I App. 20a). It rejected appellants' "astonishing argument" that legislative action can be equated

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[18] The petition for rehearing was unanimously denied on October 29, 1987. The full court was advised of appellants' suggestion for rehearing *en banc*, and no judge requested a vote on the suggestion for rehearing *en banc*. (I App. 5a).

[19] On June 18, 1986, the Court of Appeals issued its first decision in favor of plaintiffs. On January 12, 1987, this Court remanded the case to the Court of Appeals for reconsideration in light of *Tashjian v. Republican Party of Connecticut*. Having considered the matter further after supplemental briefing, the Court of Appeals concluded that *Tashjian* supported its original decision and, on August 18, 1987, issued a second decision, which is the subject of this appeal.

with voluntary action by the parties, stating: "The exercise of the coercive power of the state is the antithesis of voluntary action by political associations." (*Id.*, 21a-22a). The court recognized the risk that state regulation of parties' internal affairs "will favor some parties and some party factions over others." (*Id.*, 40a). It held that the state's interest in orderly general elections does not give it the power to unnecessarily regulate parties' internal affairs or "preempt party decision-making in order to protect political parties from the disruption inherent in deciding matters for themselves." (*Id.*, 40a-42a).

With respect to the ban on endorsements, the Court of Appeals stated that "[p]rohibiting the governing body of a political party from supporting some candidates and opposing others patently infringes both the right of the party to express itself freely and the right of party members to an unrestricted flow of political information." (*Id.*, 50a (citing *Pacific Gas & Electric Co. v. Public Utilities Commission of California*, 475 U.S. 1, 8 (1986))). It also found that appellants' asserted state interests were "a form of paternalism that is inconsistent with the First Amendment." (*Id.*, 52a). Accordingly, the Court of Appeals concluded that the challenged Elections Code provisions substantially burden plaintiffs' first amendment rights and that appellants had failed to show a compelling state interest in defense of the challenged statutes. (*Id.*, 49a-52a).

Following the Court of Appeals' denial on November 17, 1987 of appellants' motion to stay mandate (*id.*, 61a), Justice O'Connor denied appellants' application to stay issuance of mandate pending this appeal. Mandate issued on December 1, 1987. (CA 11.25.87).

III

SUBSEQUENT DEVELOPMENTS

Following this Court's denial of appellants' motion to stay mandate, the California Democratic Party adopted a final set of endorsement procedures for the June 1988 primary elections. (Add. 93a-95a, Kelly Dec., ¶¶ 3-8). On February 20-21, 1988, pursuant to these procedures, the Democratic Party held 16

regional pre-endorsing conferences around the state in which county central committee members evaluated Democratic candidates running for local partisan offices such as United States Congress, State Senate, and State Assembly. (Add. 95a, Kelly Dec., ¶ 9). The Democratic Party, at its March 18-20, 1988 annual convention, issued final endorsements in over 125 separate Democratic primary contests for the offices of United States Senate, United States Congress, State Assembly, and State Senate. (*Id.*, ¶ 10). The ability to endorse primary candidates has revitalized the Democratic Party by, among other things, rekindling grass roots interest in party activities. (Add. 96a, *id.*, ¶ 12). Moreover, as anticipated, the party has considered and adopted amendments to its bylaws affecting the party's internal structure in accordance with the recommendations of its Rules Committee. (*See id.*, ¶ 13).

The California Libertarian Party similarly exercised its right of endorsement at its annual convention, held on February 12-15, 1988. (Add. 91a, Hinkle Dec., ¶ 5).

The California Republican Party has also exercised its first amendment rights. At its annual convention, held February 19-21, 1988, the Republican Party amended its bylaws to reform the composition of its state central committee. (Add. 74a, Bell Dec., ¶ 9). The Republican Party's general counsel points out that the recently adopted rules reflect the Republican Party's policy decision as to what is in its best interests at the present time, and should not be construed to mean that the party desires the kind of government regulation mandated by the Elections Code provisions invalidated below. (Add. 74a, Bell Dec., ¶ 8).

SUMMARY OF ARGUMENT

Plaintiffs are political organizations and politically active individuals who brought this action to vindicate their first amendment rights of freedom of speech and freedom of association. The First Amendment protects plaintiffs' rights to speak freely on political issues and to band together for the advancement of their shared political views. In violation of these constitutional guarantees, California has stripped plaintiffs of the right to endorse candidates

in their parties' primaries and has unduly interfered with the parties' internal structures and operations.

Section 11702 of California's Elections Code prohibits plaintiff central committees from endorsing, supporting, or opposing primary candidates. Section 29430 makes it a criminal offense for any person to claim that a party endorses a particular candidate in its primary. These statutes substantially burden plaintiffs' rights of free speech and association by denying them the right to speak as a group on the qualifications of political candidates. Before the District Court, plaintiffs demonstrated without contradiction that this absolute deprivation of the right to speak also has consequential effects that further burden plaintiffs' rights and inhibit their ability to function effectively as political organizations. Plaintiffs are unable to participate in the selection process for their parties' candidates; they are unable to play any role in holding elected officials accountable to their constituents; and they are unable to recruit qualified candidates and talented leaders for their parties.

Appellants advanced no compelling state interest that justifies the burdens that sections 11702 and 29430 place on plaintiffs' exercise of their first amendment rights. The state's interest in orderly general elections is not affected by primary endorsements, and the state has no legitimate interest in preventing intraparty disputes that do not affect the general elections. Uncontroverted facts show that the state's interest in preventing voter confusion is frustrated rather than advanced by the ban on primary endorsements. Moreover, appellants offer no justification for the criminal sanctions embodied in section 29430. Accordingly, the Court of Appeals correctly determined that sections 11702 and 29430 are unconstitutional, and its holding should be affirmed.

Plaintiffs also challenged Elections Code provisions that prescribe the compositions of the parties' state central committees and limit party chairs to a single, nonrenewable term. These provisions substantially burden plaintiffs' right to determine "the structure which best allows [them] to pursue [their] political goals." *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 107 S. Ct. 544, 554 (1986). It was uncontradicted below that the Democratic and Republican Parties are saddled with unrepre-

sentative state central committees whose membership is skewed in favor of incumbent officeholders. Moreover, plaintiffs are unable to adjust their bylaws in response to the changing needs and views of their parties and party leaders. Changes in state central committee bylaws require legislative action that more often than not is neither successful nor responsive to the parties' needs. The limit on the state party chairs' terms of office deprives parties of the opportunity to make effective use of experienced leaders.

Appellants, again, failed to show that the state has a compelling interest that justifies its pervasive interference in the parties' internal affairs. This Court has never recognized a state interest in party unification or in a political party's internal governance. The state has no interest that justifies its usurpation of the parties' right to choose "the structure which best allows [them] to pursue [their] political goals." *Id.* Nor is there any justification for the imposition of criminal sanctions for the parties' exercise of this constitutionally protected choice. Accordingly, the Court of Appeals correctly found that the challenged statutes are unconstitutional, based on the uncontroverted facts established below. Its decision should be affirmed by this Court.

ARGUMENT

The first amendment rights of free speech and association are among our most jealously guarded personal freedoms. As Justice Brandeis explained:

> Those who won our independence believed that . . . freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; . . . that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.

Whitney v. California, 274 U.S. 357, 375 (1927) (Brandeis and Holmes, J.J., concurring) (footnote omitted).

Because we are a self-governing people, "[a] State's claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism." *Tashjian*, 107 S. Ct. at 552 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 798 (1983)). As explained by Professor Meiklejohn, "[w]hen men govern themselves, it is they—and no one else—who must pass judgment upon unwisdom and unfairness and danger."[20] Consequently, "the people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments." *Meyer v. Grant*, 108 S. Ct. 1886, 1894 n.7 (1988) (quoting *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 791 (1978)). This Court has recognized that "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964). The very legitimacy of our democratic system of self-government derives from the "unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States*, 354 U.S. 476, 484 (1957).

Hence, the speech banned by section 11702 of the California Elections Code, political speech, occupies the "highest rung of the hierarchy of First Amendment values," and is entitled to special protection. *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982); *Carey v. Brown*, 447 U.S. 455, 467 (1980). Prohibiting political parties from issuing primary endorsements is fundamentally inconsistent with our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

Government regulation of political speech and political parties is particularly suspect for the related reason that those drafting the regulations will have a stake in maintaining their own political power. As explained by Professor Scanlon,[21]

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[20] A. Meiklejohn, *Political Freedom: The Constitutional Powers of the People* 27 (1948).

[21] Scanlon, *Freedom of Expression and Categories of Expression*, 40 U. Pitt. L. Rev. 519, 534 (1979).

> [W]here political issues are involved governments are notoriously partisan and unreliable. Therefore, giving government the authority to make policy by balancing interests in such cases presents a serious threat to particularly important participant and audience interests.

California's exercise of control over the composition and leadership of the political parties' governing bodies is particularly suspect because it gives elected officials unprecedented control over the means by which they are elected. California turns the partisan political system on its head when it insists that the voluntary organizations through which the citizens control the government be regarded as creatures of the state.

Such regulation interferes with the constitutionally protected right to freedom of association—the "most natural privilege of man, next to the right of acting for himself, . . . of combining his exertions with those of his fellow creatures and of acting in common with them."[22] Association for the advancement of political goals falls squarely within that constitutional protection. "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." *Tashjian*, 107 S. Ct. at 548 (quoting *NAACP v. Alabama*, 357 U.S. 449, 460 (1958)).

The freedom of political association protected by the Constitution confers expressive rights directly onto political organizations. Because "[e]xercise of these basic [first amendment] freedoms . . . has traditionally been through the media of political associations," *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957), political parties as well as individual party adherents enjoy the rights of political expression and political association. To impose limitations "on individuals wishing to band together to advance their views . . . , while placing none on individuals acting alone, is clearly a restraint on the right of association." *Citizens Against*

[22] 1 A. de Tocqueville, *Democracy in America* 196 (P. Bradley, ed. 1945).

Rent Control/Coalition for Fair Housing v. City of Berkeley, 454 U.S. 290, 296 (1981). Hence, California abridges plaintiffs' *associational freedoms* by forbidding central committees from issuing endorsements.

The freedom of political association imposes other distinct limits on the regulatory power of the state. Most obviously, it prevents the state from imposing barriers to individuals' formation of political organizations. *See, e.g., NAACP v. Button*, 371 U.S. 415, 430 (1963); *Bates v. Little Rock*, 361 U.S. 516, 522-23 (1960). It also limits the state's ability to regulate the internal affairs of political organizations. *See, e.g., Tashjian*, 107 S. Ct. at 548-49; *Democratic Party of United States v. Wisconsin*, 450 U.S. 107 (1981); *Cousins v. Wigoda*, 419 U.S. 477 (1975). In utter disregard of this constitutional principle, California has enacted sets of detailed regulations governing each specific political party, dictating matters as fundamental as who shall govern the party.

This case presents constitutional questions of utmost importance to the self-governing citizens in our democracy. California attempts to control "the essence of self-government" by regulating the flow of information to its citizens and by seizing control of their political parties. Appellants cannot controvert plaintiffs' factual showing that the challenged statutes burden plaintiffs' rights to political speech and political association, nor can they advance any state interests to justify those burdens. California's regulations are fundamentally inconsistent with the First and Fourteenth Amendments. Therefore, plaintiffs urge this Court to affirm the decision below.

I

CALIFORNIA'S BAN ON PRIMARY ENDORSEMENTS VIOLATES PLAINTIFFS' FIRST AMENDMENT RIGHTS OF FREE SPEECH AND ASSOCIATION

A. The Ban on Primary Endorsements Deprives Political Parties of Their First Amendment Rights

The First Amendment clearly protects plaintiffs' right to express opinions about political candidates. "Whatever differences

may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates." *Mills v. Alabama*, 384 U.S. 214, 218 (1966). "[T]he constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971). Nevertheless, California enacted Elections Code sections 11702 and 29430, depriving plaintiff central committees of their right to endorse primary candidates.

California has not always denied plaintiff central committees this constitutional right to comment upon the qualifications of primary candidates. Plaintiff central committees could legally exercise their right to endorse, support, and oppose candidates in party primary elections until 1963, when the California legislature enacted the predecessor to section 11702 of the Elections Code. Cal. Stats. 1963 ch. 1108, p. 2574. The new statute provided, in sweeping terms, that the "state convention, state central committee, and the county central committee in each county shall not endorse, support, or oppose, any candidate for nomination by that party for partisan office in the direct primary election." Plaintiff central committees were thereby excluded from the process of choosing party nominees, "a basic function of a political party" in our system. *Kusper v. Pontikes*, 414 U.S. 51, 58 (1973).

1. Sections 11702 and 29430 Unequivocally Abridge Political Speech

It cannot seriously be disputed that a complete deprivation of the right to speak on a political issue substantially burdens plaintiffs' right of free speech. "A ban on specific group voices on public affairs violates the most basic guarantee of the First Amendment—that citizens, not the government, control the content of public discussion." *Roberts v. United States Jaycees*, 468 U.S. 609, 634 (1984) (O'Connor, J., concurring). The restrictions on plaintiffs' right of political expression in this case are far greater than those condemned in *Buckley v. Valeo*, 424 U.S. 1 (1976). In *Buckley*, this Court struck down a statute that restricted various groups, including certain political parties, from

spending more than $1,000 in advocating the election of a candidate. 424 U.S. at 39. This Court found the statute unconstitutional even though the restricted groups were allowed to state their views and spend $1,000 in support of their candidate. Plaintiff central committees, in contrast, can spend nothing and say nothing, and are threatened with criminal prosecution.[23] Unlike the plaintiffs in *Buckley*, plaintiffs herein cannot give voice to their political opinions. Sections 11702 and 29430 thus impose a far more substantial burden on precious first amendment rights than did the statute declared unconstitutional in *Buckley*. Their infringement of plaintiffs' first amendment rights is unequivocal and absolute.

For the central committee plaintiffs, this infringement has had particularly devastating consequences. The issuance of an endorsement is one of the few tools a party has to hold an incumbent accountable to the constituent party members. (J.A. 110-11, Ranney Dec., ¶ 9; J.A. 120, Bone Dec., ¶ 7). Party organizations monitor the elected officials and can use their endorsement power to ensure that officials address the needs of voters and party members.[24] (J.A. 85, Fraser Dec., ¶ 5). A consequence of depriving parties of the right to endorse is that elected officials become answerable primarily to wealthy individuals and special interest groups that have the financial power to affect a candidate's

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[23] Appellants' argument, rejected by the courts below, that there is no threat here of criminal prosecution (I App. 16a-18a; II App. a-45 to a-50) suggests that appellants would concede that criminal sanctions are inappropriate. In any event, appellants have not offered any justification for the imposition of such sanctions in this context.

[24] Contrary to appellants' assertion that the central committees' primary function is "to conduct their party's campaign in the general election" (Op. Br. 7), the Elections Code anticipates a broader role for central committees, providing that each county central committee shall perform any "duties and services for [its] political party as seem to be for the benefit of the party." Cal. Elec. Code §§ 8942, 9443. Central committees debate and take positions on various community issues, form coherent platforms after internal debate, and publicly support and oppose local and state ballot propositions. (*See, e.g.*, Add. 53a-54a, Supp. Post Dec., ¶¶ 3, 6; Add. 57a, Romero Dec., ¶ 3).

prospects for election. (Add. 11a, Coffey Dec., ¶ 3). Political party organizations are thereby drained of political power, as well as being silenced on a matter of surpassing importance and indisputable public concern.

Because they are deprived of the right to endorse primary candidates, plaintiff central committees are also unable to recruit capable candidates who will further the parties' goals. Only political parties have the breadth, scope, and ability consistently to find and persuade qualified individuals to run for the thousands of offices up for election each year. (J.A. 124, Burns Dec., ¶ 9). Yet, without the right to endorse and support potential recruits, the central committees have been hindered in attracting talented people to their organizations. (Add. 10a, Coffey Dec., ¶ 3).

2. Political Parties Cannot and Do Not Acquiesce in the State's Abrogation of Plaintiffs' Right to Endorse Primary Candidates

Appellants argue that "if a state statute does not conflict with the policies of a political party, the statute does not substantially infringe on the [first amendment] rights of its members and organizational manifestations . . . ." (Op. Br. 34 (citing *Marchioro v. Chaney*, 442 U.S. 191 (1979))).

This argument is astounding in light of the record below, which clearly establishes that the Democratic and Libertarian Parties oppose the statutes at issue.[25] By way of uncontradicted declarations, plaintiffs demonstrated that were it not for the challenged statutes, county central committees would have endorsed candidates in their parties' primary elections.[26] Successive chairs of plaintiff Libertarian State Central Committee have filed declara-

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[25] Of course, whether or not the parties supported the legislation at some time in the past is utterly irrelevant. *See Tashjian*, 107 S. Ct. at 547 (Republican Party successfully challenged statute it had fought to uphold ten years earlier).

[26] *See* Add. 37a, King Dec., ¶ 2 (Alameda County Democratic Central Committee); Add. 57a, Romero Dec., ¶ 2 (Placer County Democratic Central Committee); Add. 47a, Post Dec., ¶ 4 (San Francisco County Democratic Central Committee).

tions evidencing that party's unequivocal support of this lawsuit. (*See* Add. 24a-26a, Gingell Dec.; CA 11.5.85, Dean Dec.; Add. 62a, Hinkle Dec., ¶ 2). The Democratic State Central Committee, although it did not join this lawsuit prior to its filing, has resolved to join as soon as is feasible and has stated that it "enthusiastically supports this lawsuit in all of its causes of action, affirms its principles and goals, and wishes to assist in its prosecution." (Add. 34a, Kelly Dec., Exh. A). Both these state central committees, following denial of appellants' motion for stay of mandate, have followed through and issued endorsements of primary candidates. At the Libertarian Party's annual convention, in February of 1988, the party endorsed the candidacy of Mr. Jack Dean, who was running in the June 1988 Libertarian Party primary for the office of United States Senator. (*See* Add. 91a, Hinkle Dec., ¶ 5). At its March 1988 annual convention, the Democratic Party endorsed over 125 primary candidates for partisan office. (Add. 95a, Kelly Dec., ¶ 10).

Appellants also fail to recognize that plaintiff county central committees are independent and distinct political entities. *See* Cal. Elec. Code §§ 8820-8945, 9320-9510. Their members are separately elected, and they adopt their own bylaws, hire their own staffs, independently raise funds, and have the capacity to sue or be sued. (Add. 54a, Supp. Post Dec., ¶ 5). Plaintiffs, as separate entities and individuals, were specifically forbidden by section 11702 to endorse or oppose primary candidates on behalf of their political associations. Section 29430 subjects plaintiffs to criminal penalties if they claim that their party endorses a particular candidate for the primary election. Plaintiff county central committees brought this action to vindicate *their own* first amendment rights.

Legislative abrogations of county central committees' first amendment rights are unconstitutional even if one makes the unsupportable assumption that every other party member and entity, including the state central committees, supports the ban on endorsements. The right of free speech is preserved for each and every plaintiff by the First Amendment and can be neither "bestowed" on plaintiffs by their parties (*see* Op. Br. 15), nor waived by the parties on plaintiffs' behalves. A majority cannot

waive the first amendment rights of a minority. *See generally Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290 (1981).

In *Citizens Against Rent Control*, a majority of Berkeley voters had passed an initiative restricting campaign contributions. This Court found the initiative unconstitutional because it deprived plaintiffs of their first amendment right to support or oppose ballot measures. 454 U.S. at 299-300. Even though the majority of voters did not wish to exercise their first amendment rights, this Court found that they could not unilaterally remove those rights from the minority who wished to express themselves. This Court noted that it was irrelevant that the "voters rather than a legislative body enacted [the initiative], because the voters may no more violate the Constitution by enacting a ballot measure than a legislative body may do so by enacting legislation." *Id.* at 295. *See also United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938). Just as voters cannot validate unconstitutional legislation through the initiative process, the political parties cannot validate unconstitutional legislation by acquiescing to it. Whatever position a particular political party may take on endorsements at any given time, the first amendment rights of plaintiff county central committees and individuals cannot be waived by their parties' policies nor taken away by the state.

Appellants' reliance on *Marchioro* is misplaced. That case does not stand for the proposition that plaintiffs' constitutional rights can be waived at the whim of the party. (*See* Op. Br. 34). Rather, it holds that if a challenged statute is not the source of the burden on plaintiffs' rights, the statute is not unconstitutional. In *Marchioro*, the challenged interference with internal party affairs was not mandated by statute, but was, instead, created by a voluntary delegation of authority by the party to a statutorily-created committee. This Court held, therefore, that "[t]here can be no complaint that the party's right to govern itself has been substantially burdened by statute when the source of the complaint is the

party's own decision to confer critical authority on the State Committee." *Marchioro*, 442 U.S. at 199.[27]

The relevant inquiry, in ascertaining whether there has been a "substantial infringement" under *Marchioro*, is not whether the Elections Code is consistent with present party policy, but whether it is in fact the source of the burden on plaintiffs' rights. Here it is obvious that section 11702 is the source of the burden on plaintiffs' right to endorse primary candidates. Unlike the statute in *Marchioro*, the statutes challenged here mandate the interference with free speech. Consequently, those statutes impose a substantial and unconstitutional burden on plaintiffs' first amendment rights.

3. The State Cannot Condition Ballot Access on the Sacrifice of First Amendment Rights

Appellants argue that as a price for participating in the state's primary system, the parties willingly subject themselves to the challenged regulations. (Op. Br. 41). Parties that are not ballot-qualified[28] are purportedly provided "with other means of placing their candidates on the general election ballot although the candidates' party affiliations do not appear on the ballot." (*Id.*) Appellants also offer parties the "choice" of "qualifying" their candidates as write-ins. (Op. Br. 25, 49). In other words, appellants would have parties choose among (1) remaining silent during the primary campaign, (2) being silenced as to their affiliation with a candidate on the general election ballot, and (3) having their candidate omitted from the ballot. Each "choice" impermissibly burdens plaintiffs' first amendment rights.

This Court has already considered and rejected the argument that first amendment rights are not infringed by burdens on one

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[27] The state convention subsequently established an independent party committee, composed as the party desired, to handle all internal party affairs. (J.A. 106, Marchioro Dec., ¶ 6).

[28] The term "ballot-qualified party" is used herein as shorthand for a party that is eligible to participate in the state-run primary and to have its nominees listed on the general election ballot with the party's affiliation.

avenue of expression if other avenues of expression remain open. In *Meyer v. Grant*, 108 S. Ct. 1886 (1988), the plaintiffs had challenged a Colorado statute that, while allowing proponents to place a state constitutional amendment on the ballot if they could obtain the signatures of 5% of the voters on an "initiative petition" within a six-month period, made it a felony to pay petition circulators. 108 S. Ct. at 1889. Colorado argued that the burden on first amendment expression was not substantial in light of the fact that other avenues of expression, such as the circulation of petitions by volunteers, remained open. This Court rejected Colorado's argument outright: "That [the statute] leaves open 'more burdensome' avenues of communication, does not relieve its burden on First Amendment expression." 108 S. Ct. at 1893 (citing *FEC v. Massachusetts Citizens For Life, Inc.*, 479 U.S. 238 (1986)).

California's independent candidacy and write-in "options" are substantially more burdensome avenues of expression than party-identified ballot access. Consequently, such options (if indeed such options *are* available to parties eligible for ballot qualification) do not relieve the burdens on parties' first amendment freedoms. "The First Amendment protects plaintiffs' right not only to advocate their cause but also to select what they believe to be the most effective means for so doing." *Meyer*, 108 S. Ct. at 1893.

Appellants claim nonetheless that the state is entitled to establish such burdensome conditions on ballot access. Appellants rely on *American Party of Texas v. White*, 415 U.S. 767, 780-81 (1974), for the proposition that "[w]hen a state chooses to conduct nominating elections for political parties and provide automatic access to and identification on the general election ballot for candidates of the parties, it may establish conditions to this privilege so long as the conditions do not invidiously discriminate among the political parties." (Op. Br. 49).[29]

[29] Appellants are correct only insofar as they concede that invidiously discriminatory conditions on ballot access are unconstitutional. In *American Party*, conditions on ballot access were upheld against that type of equal protection challenge. 415 U.S. at 780-81. This Court did not hold, however, that conditions on ballot access are not subject to attack on other constitutional grounds. Moreover, as plaintiffs argued below, section 11702 cannot withstand equal protection scrutiny because it invidiously discriminates against plaintiff central committees by depriving them of the right to endorse primary candidates without similarly burdening the rights of other political associations. (*See* DC Item 27 at 24-25).

In response to Colorado's similar argument in *Meyer* that it could impose limitations on the right to legislate by initiative because it had created that right, this Court held that a limitation even on a state-created right is unconstitutional if it "trenches upon an area in which the importance of First Amendment protections is 'at its zenith.'" 108 S. Ct. at 1894. Conditions on ballot access, likewise, are unconstitutional if they burden first amendment rights, regardless of whether the state was under any obligation to conduct nominating elections for the parties in the first place. This Court has recognized repeatedly that

> [government] may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited.

Perry v. Sindermann, 408 U.S. 593, 597 (1972). *See also Regan v. Taxation With Representation*, 461 U.S. 540, 545 (1983) ("government may not deny a benefit to a person because he exercises a constitutional right"). Even if parties have no "right" to ballot access by way of a state-run primary, the state may not condition such access on a party's relinquishment of its first amendment right to endorse a political candidate.

Accordingly, even if one were to accept appellants' inaccurate and extraordinary argument that a major party can "choose" not to be ballot-qualified,[30] the placement of a candidate's name on the ballot without party identification is not a suitable constitu-

[30] As is explained below, appellants' assertion that a major party can choose not to be ballot-qualified is inconsistent with Elections Code

tional alternative to party ballot access. An independent candidate is by definition a candidate that is not affiliated with an established party. Requiring a party-affiliated candidate to run as an independent candidate misleads voters and utterly deprives the party and its candidate of their first amendment rights to inform voters of their affiliation. The rights of voters to be informed about the candidates is likewise abridged, because, as this Court recently explained, party labels are an important piece of election information. *Tashjian*, 107 S. Ct. at 552. Moreover, limiting a party-affiliated candidate to a write-in candidacy is tantamount to denying that candidate access to the ballot. Thus, the "choice" that appellants claim is available to the parties is a choice among substantial, unpalatable limitations on their first amendment rights.

Furthermore, the notion that parties have "chosen" to subject themselves to the challenged regulations is incorrect.[31] The Elections Code provides no means for a party to renounce voluntarily its ballot-qualified status and remain intact.[32] As long as *one percent* of the number of voters at the preceding gubernatorial election affiliate with the party on their voter registration forms, the party remains ballot-qualified. Cal. Elec. Code § 6430(b).

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provisions allowing parties consisting of as little as one percent of registered voters to remain ballot-qualified.

[31] California's Elections Code does not contemplate that parties will choose between two different routes, one regulated and the other not, to the general election ballot. Rather, the code refers to appellants' "non-ballot-qualified parties" as "political bodies," reserving the terminology "political party" for groups that have qualified for ballot access. *See* Cal. Elec. Code §§ 9950-9956. Once an organization satisfies a threshold requirement for becoming a "political party," statutory bylaws, which may or may not resemble the organization's existing bylaws, are enacted or must be "chosen" to govern the party thereafter. The option of qualifying a candidate for the ballot as an independent is intended, obviously and literally, for candidates who are independent of any political party, rather than as a means for political parties to avoid regulation.

[32] Appellants make the startling argument that the parties can *disband* to protect their first amendment right to freely *associate*. (Op. Br. 40).

Alternatively, if at least one candidate chooses to register for the primary election, with or without party sanction, and receives at least two percent of the vote for any statewide office, the party remains ballot-qualified. Cal. Elec. Code § 6430(a). Finally, section 6430(c) allows a party to qualify for the ballot by petition. Given the vast numbers of voters registered in California as Democrats or Republicans, it is unrealistic to suggest that either the Democratic or the Republican Party could fall below the one percent threshold conferring ballot-qualified status in the foreseeable future. Nor is it likely that a majority of their members would want them to, given the heavy additional burdens facing nonqualified political associations, which must promote "independent" or write-in candidates.

By any standard, California has substantially infringed plaintiffs' first amendment rights in depriving central committees of the right to endorse candidates in primary elections. This Court has made it clear that "legislative restrictions on advocacy of the election or defeat of political candidates are wholly at odds with the guarantees of the First Amendment." *Meyer*, 108 S. Ct. at 1895; *Buckley*, 424 U.S. at 50. Sections 11702 and 29430 of the California Elections Code restrict such advocacy more completely than any other statute this Court has yet analyzed.

B. Appellants Cannot Satisfy Their Burden of Demonstrating that the Ban Is Justified by a Compelling State Interest

Because the ban on primary endorsements constitutes a significant encroachment on plaintiffs' first amendment rights, "the State may prevail only upon showing a subordinating interest which is compelling." *Bates*, 361 U.S. at 524. The statute must survive exacting scrutiny. *Elrod v. Burns*, 427 U.S. 347, 362 (1976); *Buckley*, 424 U.S. at 64-65. In order to justify such an encroachment, the state must advance an interest that is "paramount, one of vital importance, and the burden is on the government to show the existence of such an interest." *Elrod*, 427 U.S. at 362. The state bears the further burden of demonstrating that "the regulation is a precisely drawn means of serving" this compelling interest. *Consolidated Edison Co. v. Public Service Commission*, 447 U.S. 530, 540 (1980). "Precision of regulation must be the touchstone in an area so closely touching our most

precious freedoms." *Kusper*, 414 U.S. at 59 (quoting *NAACP v. Button*, 371 U.S. at 438). In sum, the restriction

> must further some vital government end by a means that is least restrictive of [first amendment freedoms] in achieving that end, and the benefit gained must outweigh the loss of constitutionally protected rights.

Elrod, 427 U.S. at 363.

Appellants allude to two governmental interests that they apparently contend may justify the ban on primary endorsements: (1) California's interest in the stability of its governmental system; and (2) its interest in avoiding voter confusion. The assertion of such interests is undermined, however, by the state's failure to ban endorsements by any group other than the official governing bodies of the parties. The political parties are the only groups in California that cannot endorse primary candidates. The political parties are the only groups in California that cannot send out mailers advocating election of a slate of candidates. The political parties are the only groups in California that cannot embark on a telephone campaign to promote a primary candidate's nomination. The political parties are the only groups that cannot canvass door-to-door in support of primary candidates. Under these circumstances, appellants cannot argue credibly that the challenged ban on primary endorsements serves any state interest. There is simply no justification for this complete deprivation of plaintiffs' first amendment rights.

1. The State's Interest in the "Stability of Its Governmental System" Is Not Threatened by Primary Endorsements and Cannot Justify an Outright Ban on Such Political Speech

Appellants argue that "the primary election system" as it exists in California "promotes the state's interest in the stability of its governmental system . . . ." (Op. Br. 43). Stability is fostered via the creation of so-called "umbrella parties." (Op. Br. 42). However, appellants do not explain specifically how the ban on primary endorsements promotes governmental stability, nor could they. California survived without such a ban, its governmental

system intact, through 1963. As commentators have noted, California is *the only state* with such a ban in force today.[33]

The record is replete with evidence that political parties' issuance of primary endorsements destabilizes neither the parties nor the government. In Minnesota, the Democratic Farmer-Labor Party

> has regularly endorsed candidates running in the state's primaries since the party's inception shortly after World War II, including candidates seeking the offices of United States Senator, Governor, Attorney General, State Treasurer, and State Auditor.

(J.A. 85, Fraser Dec., ¶ 6). In the State of Washington, the King County Democratic Central Committee likewise has issued primary endorsements of candidates for the offices of United States Senator, United States Representative, Governor, State Legislator, and County Councilor. (J.A. 105, Marchioro Dec., ¶ 3). State political parties also endorse candidates in their own primary elections in Illinois, Delaware, Connecticut, New Mexico, New York, and Massachusetts. (J.A. 96, Jewell Dec., ¶¶ 9-10). Yet, none of these states has suffered a resulting destabilization of its governmental system.

The state has an interest in preserving orderly general elections and a closely circumscribed, derivative interest in pre-election resolution of intraparty disputes. *See Storer v. Brown*, 415 U.S. 724, 736 (1974). The state interest recognized by this Court in *Storer* does not, however, extend to the "internal steps [taken by the parties] affecting their own process for the selection of candidates." *Tashjian*, 107 S. Ct. at 554.

In *Storer*, this Court upheld a provision of the California Elections Code that denied ballot position to independent candidates who had been affiliated with a political party within the past twelve months. Recognizing that "splintered parties and unrestrained factionalism may do significant damage to the fabric of government," 415 U.S. at 736, this Court held that the general election ballot was not the appropriate forum for the resolution of

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[33] *See supra* note 7.

intraparty disputes. Intraparty disputes were more appropriately resolved *during the parties' nomination processes*: "The State's general policy is to have contending forces within the party *employ the primary campaign and primary election to finally settle their differences*. The general election ballot is reserved for major struggles; it is not a forum for continuing intraparty feuds." 415 U.S. at 735 (emphasis added). Thus, this Court has recognized the primary campaign and primary election as appropriate forums for the resolution of intraparty feuds. As the Court of Appeals correctly observed, "a state's interest is in orderly elections, not orderly parties, and it may regulate political parties only as an incident to regulating elections." (I App. 40a). Nothing in *Storer* suggests that a state may preempt intraparty feuding that does not threaten the state's ability to conduct orderly general elections.[34]

The state's claimed interest in promoting political stability and in tempering "unrestrained factionalism," under *Storer*, may justify channeling political competition into a particular forum, but not suppressing or prohibiting political competition. Where state statutes have the effect of suppressing political competition, this Court has found that first amendment interests outweigh the state's interest in political stability. In *Anderson v. Celebrezze*, 460 U.S. 780 (1983), for example, this Court found that Ohio had no right to enforce its conditions on ballot access to prevent a former Republican presidential contender, John Anderson, from running as an independent. "Political competition that draws resources away from the major parties cannot, for that reason alone, be condemned as 'unrestrained factionalism.'" 460 U.S. at 803. Neither can primary endorsements be condemned as "unrestrained factionalism," especially since the primary election has been set up as the appropriate forum for the resolution of intraparty conflicts. *See Storer*, 415 U.S. at 735. "Competition in

[34] Restoration of plaintiffs' first amendment rights to issue primary endorsements would facilitate the process of reaching party consensus, rather than endangering it. Political parties provide "an organizational forum in which conflict can be expressed and resolved peacefully so that common purposes can be more effectively pursued." (Add. 20a, Supp. Costantini Dec., ¶ 9).

ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms." *Williams v. Rhodes*, 393 U.S. 23, 32 (1968).

In any case, the interest asserted by appellants in fostering so-called "umbrella parties" that promote a "symbiotic relationship between ballot-qualified political parties and the state" (Op. Br. 44) has never been recognized by this Court as legitimate, much less compelling. Appellants' argument that ballot-qualified parties

> *intentionally forgo control of their own identity* in order to become vehicles for running a stable and democratic California governmental system [and that the] *California electoral system is designed to produce such parties* for just that purpose

(Op. Br. 38 (emphasis added)) is completely untrue and utterly repugnant to the First Amendment. Appellants' related argument that ballot-qualified parties, by virtue of being regulated by the state, become inextricably aligned with the state, is circular and anti-constitutional. The Constitution's protections would mean nothing if they were not applicable to protect entities that have been subjected to government regulation. As to the promotion of "umbrella" parties, the notion that the state can use its regulatory power over elections to manipulate the parties' political ideology might be appropriate in a totalitarian regime, but never in a democratic system like our own, which values individual thought and expression.

This Court recently rejected a similar attempt by Connecticut to influence the content of a political party's ideology in *Tashjian*. Connecticut had taken the position that the integrity of the parties and of the electoral system would be destroyed if the parties *did not* maintain their ideological purity. 107 S. Ct. at 552-53. To preserve the distinctions between the parties, Connecticut required that the parties hold closed primaries so that they not become "amorphous." 107 S. Ct. at 551. The Republican Party, however, wished to open its primary to independent voters.

This Court held that Connecticut could neither act as guarantor of the party's integrity, nor protect the party from internal disruption. 107 S. Ct. at 553-54. The question was not "whether

the state legislature was acting wisely in enacting the closed primary system in 1955, [n]or whether the Republican Party makes a mistake in seeking to depart from the practice of the past 30 years." 107 S. Ct. at 553 (footnote omitted). Right or wrong, the Constitution relegates to the party the "determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals . . . ." 107 S. Ct. at 554. Just as Connecticut had no legitimate interest in maintaining the ideological purity of the Republican Party, California has no legitimate interest in promoting ideologically diffuse "umbrella" parties.

Appellants further claim that the state's interest in limiting each voter to a single nominating act—another aspect of its interest in orderly elections—is served by the ban on primary endorsements. (Op. Br. 46-47). Appellants thereby fail to distinguish between the nominating act—the vote each registered voter may cast at the primary election—and speech that may influence voters' performance of that act. Appellants also fail to explain why, if their contention is to be taken seriously, California law permits all groups *except the party state conventions and central committees* to issue endorsements. If an endorsement were to be construed as a nominating act, then all the groups and individuals who currently endorse candidates and slates of candidates have violated the "single nominating act" principle. Even appellants do not go so far as to suggest that the state could validly ban all discussion of primary candidates. Any interest in limiting each voter to a single nominating act clearly cannot justify statutes limiting discussion of candidates' qualifications and political positions.

2. The Ban on Primary Endorsements Frustrates the State's Asserted Interest in Protecting Voters from Confusion

Appellants next contend that the state's interest in minimizing voter confusion justifies its ban on primary endorsements. (Op. Br. 45). Essentially, appellants claim that sheltering voters from the views of party leadership will lessen their confusion. Appellants have made no factual showing in support of any such claim. In fact, the factual showing in this record establishes the contrary.

In the past, depriving the voters of this information has demonstrably frustrated the state's interest in minimizing voter confusion. Eliminating central committees from the debate has allowed well-heeled imposters to sneak off with Democratic Party nominations. For example, in 1980, Tom Metzger, a Grand Dragon of the Ku Klux Klan, captured the Democratic nomination for Congress in the San Diego area, even though he stood for policies abhorrent to the Democratic Party and its members. (Add. 15a, Costantini Dec., ¶ 2).

Strangely, all groups other than party state conventions and central committees remain free to endorse, support, or oppose candidates in the primary elections.[35] Yet, it was the confusion generated by the slate card mailers produced by such groups, mailers using the "Democratic" and "Republican" appellations, that led to the enactment of section 11702's predecessor in 1963. *See* Cal. Elec. Code § 11701(3). Such mailers have misled voters in the past into believing that the official party organizations were supporting candidates. (Add. 5a, Christman Dec., ¶ 10). The central committees could limit the confusion if they were permitted to endorse. (Add. 16a, Costantini Dec., ¶ 5; Add. 49a-50a, Post Dec., ¶ 10). Recognizing that such a change would reduce voter confusion, a recent staff report of the California Fair Political Practices Commission recommended that the commission "[a]llow party endorsements in primary campaigns so as to offset the 'growing power' of slate mailings." (DC Item 46, Costantini Dec., Exh. B, at 55). Furthermore, an endorsement by a party central committee is a uniquely valuable piece of information, more dependable than the endorsement of any individual or

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[35] The fact that the California statute discriminates on its face among organizations wishing to exercise fundamental first amendment rights provides an additional ground for finding it unconstitutional. *See Police Department of Chicago v. Mosley*, 408 U.S. 92, 99 (1972). Section 11702 also interferes with the first amendment right of association. *See Citizens Against Rent Control*, 454 U.S. at 296 (imposing limitations "on individuals wishing to band together to advance their views on a ballot measure, while placing none on individuals acting alone, is clearly a restraint on the right of association").

single-issue group. (J.A. 125, Burns Dec., ¶ 12; J.A. 101-02, Lee Dec., ¶ 11).

This Court has repeatedly recognized that "[a] State's claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism." *Tashjian*, 107 S. Ct. at 552; *Anderson*, 460 U.S. at 798. The First Amendment disfavors "the 'highly paternalistic approach' of statutes [like section 11702] which restrict what the people may hear." *Bellotti*, 435 U.S. at 791 n.31 (quoting *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 770 (1976)). As in *Tashjian*: "The state statute is said to decrease voter confusion, yet it deprives [party] members of the opportunity to inform themselves as to the level of support for the Party's candidates among a critical group of electors." 107 S. Ct. at 552. This Court's cases "reflect a greater faith in the ability of individual voters to inform themselves about campaign issues." *Tashjian*, 107 S. Ct. at 552 (quoting *Anderson*, 460 U.S. at 797).

To the extent that appellants' argument rests on an interest in preventing the central committees from having a disproportionate influence over the outcome of primary elections, it is similarly ill-conceived. "[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment . . . ." *Buckley*, 424 U.S. at 48-49; *Meyer*, 108 S. Ct. at 1894 n.7; *Bellotti*, 435 U.S. at 790-91.

Because "[d]emocracy depends on a well-informed electorate, not a citizenry legislatively limited in its ability to discuss and debate candidates and issues," *Buckley*, 424 U.S. at 49 n.55, the ban on the central committees' issuance of primary endorsements should be ruled unconstitutional under the First and Fourteenth Amendments.[36]

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[36] The First Amendment's requirement that Congress "make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble," is made applicable to the states by the Fourteenth Amendment. *Williams*, 393 U.S. at 30-31; *Thornhill v. Alabama*, 310 U.S. 88, 95 (1940).

II

CALIFORNIA'S REGULATION OF THE MEMBERSHIP OF THE STATE CENTRAL COMMITTEES AND THE TERM OF PARTY CHAIRS VIOLATES PLAINTIFFS' RIGHT TO FREE ASSOCIATION

In a democracy, the people are sovereign. To carry out the duties implicit in that principle, the people must be free to form associations for the discussion and promulgation of their ideas and for the recruitment and support of candidates who will represent those ideas in public office. Political parties, freely created by the people themselves, are such associations. They are vehicles developed and employed by the people in a democratic system of government to meet their responsibilities of citizenship. It is, therefore, essential that political parties be free of unnecessary governmental control. The excessive state regulation imposed upon California political parties strikes at the core of our democratic form of government.

The Constitution recognizes that "the right of individuals to associate for the advancement of political beliefs" is fundamental. *Williams*, 393 U.S. at 30. "The freedom of association protected by the First and Fourteenth Amendments includes partisan political organization." *Tashjian*, 107 S. Ct. at 548. This freedom of association prevents the state from interfering with a political party's internal structure and organization. *See Democratic Party of United States v. Wisconsin*, 450 U.S. 107 (1981) (Wisconsin not entitled to control the process of selecting the Wisconsin delegates to the Democratic National Convention); *Cousins v. Wigoda*, 419 U.S. 477 (1975) (National Democratic Party's freedom of association prevents state from controlling who may sit as the Illinois delegation in National Convention).

California's attempt to take control of the parties' internal affairs is a pernicious invasion of its citizens' rights of free choice and self-governance, which are at the heart of our democracy. The state's extensive regulations interfere with each "Party's determination . . . of the structure which best allows it to pursue its political goals," a determination that is "protected by the Constitution." *Tashjian*, 107 S. Ct. at 554. *See also Ripon*

Society, Inc. v. National Republican Party, 525 F.2d 567, 585 (D.C. Cir. 1975) (*en banc*) ("there must be a right not only to form political associations but to organize and direct them in the way that will make them most effective"), *cert. denied*, 424 U.S. 933 (1976). The rights of the parties and their adherents are thereby abridged: "Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." *Tashjian*, 107 S. Ct. at 549 (quoting *Sweezy*, 354 U.S. at 250).

A. Laws Dictating the Membership and Leadership of Parties' Central Committees Substantially Burden Plaintiffs' First Amendment Rights

California subjects political parties to a detailed and complicated scheme of regulation. Provisions of the Elections Code dictate the size of the party state central committees, Cal. Elec. Code §§ 8660-61, 8663, 9160-64; apportion the seats on those committees between active party members and elected officials, *id.*; fix the method of selection of the members of those committees, Cal. Elec. Code §§ 8664-65; set up the procedure for removal of members, Cal. Elec. Code § 8667; provide for the filling of vacancies, Cal. Elec. Code § 8669; and limit the party chair to a single, non-renewable term, requiring that the chair rotate between northern and southern California. Cal. Elec. Code §§ 9274, 9816. In the case of the Republican and Libertarian Parties, the length of that term is statutorily limited to two years. *Id.*

This intensive regulation of the parties' internal structures has had a debilitating effect on California's political parties. The plight of fledgling parties—those most in danger of being regulated out of existence—is illustrated by the experience of plaintiff Libertarian Party. When it became ballot-qualified, the Libertarian Party did not have representatives in the legislature who could enact the party's existing bylaws.[37] Instead, the party was required to be governed by the bylaws of one of the other ballot-

[37] The fallacy of appellants' argument that the *parties* have caused their bylaws to be enacted (Op. Br. 47) is most apparent when the needs of minor political parties are addressed. Clearly, there is a difference between a political party and a state legislative body even in the case of the major political parties. The difference is inescapable in the case of minor parties that do not have representatives in the legislature.

qualified parties. Consequently, the Libertarian Party was forced to adopt the bylaws governing the Peace and Freedom Party. (Add. 26a, Gingell Dec., ¶¶ 5-6). The new bylaws forced the Libertarian Party to establish a totally new statewide organization that differs from its preferred and natural structure, organizing by county, rather than by region. (*Id.*)

Likewise, Republicans and Democrats have been saddled with unrepresentative state central committees. Although the members of the *county* central committees are elected by the general party membership to represent their views on party matters, Cal. Elec. Code §§ 8820-8823.5, 9320-9323, the members of the *state* central committee are fixed by statute. Cal. Elec. Code §§ 8660, 9160. The statutory formulae for both the Republican and the Democratic state central committees guarantee that the county representatives will be underrepresented by comparison to elected officials and nominees for elective office. (J.A. 115-16, Sturrock Dec., ¶ 9; Add. 12a, Coffey Dec., ¶ 7). In the case of the Republican Party, about three-fourths of the state committee members are elected officials, party nominees, and their appointees. (J.A. 115-16, *id.*) The legislature has thus skewed the composition of the state central committees in favor of elected officials and party nominees, which has very serious consequences for party members' rights of self-governance. As Professor Tribe notes,

> [f]ew prospects are so antithetical to the notion of rule by the people as that of a temporary majority entrenching itself by cleverly manipulating the system through which the voters, in theory, can register their dissatisfaction by choosing new leadership.[38]

As incumbents legislatively entrench themselves in the party leadership, the parties become rigid and fossilized. As Professor Weisburd explains, "requiring a particular form of party organization can prevent party adherents from attaining objectives incon-

[38] L. Tribe, *American Constitutional Law* 1097 (2d ed. 1988).

sistent with that required form of organization."[39] For example, the underrepresentation of county central committee members on the state central committees attenuates the relationship between party leadership and ordinary party adherents. Because the rank-and-file's elected representatives have relatively little power over the formulation of party policy, rank-and-file input is suppressed and diluted. Grass roots workers who do not seek their own election are thereby discouraged because the party becomes truly the property of the elected officials and party nominees. (*See generally* J.A. 123, Burns Dec., ¶¶ 6-7). This constitutes a substantial burden on the associational rights of both the parties and their members.

The Elections Code limitation of Republican and Libertarian State Central Committee chairs to a single two-year term further burdens plaintiffs' associational rights. A two-year period is hardly enough time for the chairs to become familiar with the powers of their office. It is also not enough time for the chairs to formulate, much less implement, their own programs and policies. As noted by the District Court, the parties are "gravely weakened if the members are not permitted to make use of the services of an able leader for a long enough period of time to ensure effective administration." (II App. a-60). Even if a chair is able to overcome these procedural hurdles and begin acting as a capable and effective leader, the party has no choice but to retire that person at the end of two years, regardless of the wishes of the party membership. As the Court of Appeals found, "the legislature has impaired the parties' ability to commit their fortunes to experienced and successful leadership." (II App. a-25).

As with the ban on primary endorsements, party bylaws incorporated the challenged provisions only because the law required them to do so. (Add. 51a, Post Dec., ¶ 14; Add. 59a, Romero Dec., ¶ 9; J.A. 116-17, Sturrock Dec., ¶ 12).[40] Since the issuance

[39] Weisburd, *supra* note 7, at 260.

[40] Violation of the challenged provisions is punishable *criminally* "by fine not exceeding one thousand dollars ($1,000) or by *imprisonment* in the state prison for 16 months or two or three years, or by both." Cal. Elec. Code § 29102 (emphasis added).

of mandate, both the Democratic Party and the Republican Party have amended their bylaws. As anticipated, the Democratic Party has adopted amendments to the party bylaws relating to internal party governance. (*See* Add. 65a, Supp. Kelly Dec., ¶ 6). Similarly, the Republican Party recently adopted amendments to its bylaws that make substantial changes in the composition of the state central committee. (Add. 74a, Bell Dec., ¶ 9).

Until the issuance of mandate, the state had foreclosed this kind of ongoing reevaluation and revision of the parties' bylaws. By thus depriving the parties of the flexibility to adopt bylaws suited to their developing needs and goals, California's Elections Code substantially infringed plaintiffs' first amendment rights of political association and expression.

B. California's Regulation of the Composition and Leadership of the State Central Committees Is Not Justified by a Compelling State Interest

The interests advanced by appellants in support of the state's regulation of parties' internal structure amount to little more than the rank paternalism rejected by this Court in *Tashjian*. Statutorily dictating the composition of a state central committee, according to appellants, promotes the state's "interest in the 'democratic management of the political party's internal affairs.'" (Op. Br. 43).[41] Statutorily limiting committee chairs to a single two-year term, and requiring that the chair rotate each term between northern and southern California, "assures that the rotational system will occur with sufficient regularity to prevent regional friction from reaching a 'critical mass.'" (Op. Br. 48). The well-being of the party, however, is none of the state's business. *Tashjian*, 107 S. Ct. at 554.

Legislative enactment of party bylaws is necessary, according to appellants, to "mitigate[ ] potential divisiveness within the state central committee which could interfere with its role in uniting

[41] Appellants also suggest that statutorily dictating parties' bylaws "enables the party and its membership to enforce the by-laws in state court." (Op. Br. 47). However, they do not explain how judicial enforcement advances any compelling state interest.

the party for the general election." (Op. Br. 47). However, the state has no cognizable interest in the unification of the party, because it has no interest in preventing a party "from undertaking a course of conduct destructive of its own interests." *Tashjian*, 107 S. Ct. at 554. As discussed above, in argument section I.B.1, the state's interest in averting factionalism extends only to the point of keeping continuing intraparty feuds off the general election ballot. As this Court noted in *Tashjian*, the protection upheld in *Storer* was "undertaken to prevent the disruption of the political parties from without, and not, as in this case, to prevent the parties from taking internal steps affecting their own process for the selection of candidates." 107 S. Ct. at 553-54.

This constitutional recognition of a political party's right to govern itself similarly limits the nature of the proposed state interest in "democratic management of a political party's internal affairs." This Court has never held that the state has an interest in managing internal party affairs.[42] *See generally Democratic Party of United States v. Wisconsin*, 450 U.S. at 124. *See also Ripon Society, Inc.*, 525 F.2d 567 (rejecting challenge to Republican National Party's formula for allocating delegates at its national convention). *American Party of Texas v. White*, 415 U.S. 767 (1974), relied upon by appellants, did not purport to recognize such an interest. In that case, this Court simply noted that "the party nominating convention process is unrelated to ballot qualification and corresponds more to the democratic management of the political party's internal affairs." 415 U.S. at 783 n.15.

Furthermore, appellants have utterly failed to demonstrate that the challenged regulations in any way promote party democracy. It is instructive to note the absence of federal legislation specifying who shall be a member of any of the national committees, or who shall be designated a delegate to the national party conventions. These matters are left to the discretion of the national parties to decide for themselves without governmental interfer-

[42] It is not true, nor is it asserted, that this is a case where state regulation is necessary to prevent the derogation of the constitutional or civil rights of party adherents. *See, e.g., Smith v. Allwright*, 321 U.S. 649 (1944).

ence. The absence of such regulation on a national level, where the impact of intraparty feuds would theoretically be greater, seriously undermines appellants' claims that the state has a legitimate, much less compelling, interest in mandating the selection procedures and terms of office for analogous party organizations at the state level.

Moreover, the parties' strong motivation to achieve electoral success represents a sufficient answer to the specter of "factionalism" and disunity raised by appellants. Each party is entitled to decide what level of internal discord enhances party vitality (Add. 21a, Supp. Costantini Dec., ¶ 10), *see Tashjian*, 107 S. Ct. at 554, and is appropriate to its function as "an organizational forum in which conflict can be expressed and resolved peacefully so that common purposes can be more effectively pursued." (Add. 20a, Supp. Costantini Dec., ¶ 9). *See also* Rotunda, *Constitutional and Statutory Restrictions on Political Parties in the Wake of Cousins v. Wigoda*, 53 Tex. L. Rev. 935, 937 (1975). (*See also* Add. 20a-21a, Supp. Costantini Dec., ¶¶ 9-11).

The statutes governing the terms of party chairs similarly cannot withstand the exacting scrutiny to which they must be subject under the First Amendment. Appellants would justify these statutes with respect to "the interests of avoiding sectional identification of the party and unnecessary conflict within the committee which could impede its role of unifying the party for the general election." (Op. Br. 48). However, the state has no legitimate interest in seeing that a party avoids sectional identification or is unified for the general election. Again, the state is attempting to "substitute its own judgment for that of the Party." *Tashjian*, 107 S. Ct. at 554. If a party finds that failing to rotate the chair between northern and southern California every two years impedes its effectiveness, the party can fashion its own solution to the problem.

> The Party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution.

Id. The state cannot interfere with a party's internal governance on the pretense of protecting the party against itself. Accordingly, appellants have not carried their burden of demonstrating that the challenged provisions "further some vital government end by a means that is least restrictive[43] of freedom of belief and association." *Elrod*, 427 U.S. at 363 (footnote added).

[43] The Elections Code attaches *criminal penalties* to the violation of these laws. Cal. Elec. Code § 29102.

CONCLUSION

For the foregoing reasons, and because the state may not interfere with political parties' paramount rights of political expression and political association absent a compelling justification, plaintiffs respectfully request that the decision of the Court of Appeals be affirmed.

Dated: September 1, 1988

Respectfully submitted,

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In The
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MARCH FONG EU, Secretary of State of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; LEO HIMMELSBACH, District Attorney of Santa Clara County,

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPELLANTS' REPLY BRIEF

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No. 87-1269

In The
Supreme Court of the United States
October Term, 1987

MARCH FONG EU, Secretary of State of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; LEO HIMMELSBACH, District Attorney of Santa Clara County,

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPELLANTS' REPLY BRIEF

INTRODUCTION

Defendants agree with plaintiffs' statement (Brief for Appellees (B.A.) 23) that:

> "This case presents constitutional questions of utmost importance to the self-governing citizens in our democracy."

Plaintiffs characterize the state's interests promoted by the challenged statutes as antithetical to democratic and First Amendment values (B.A. 37):

> ". . . the notion that the state can use its regulatory power over elections to manipulate the parties' political ideology might be appropriate in a totalitarian regime, but never in a democratic system like our own, which values individual thought and expression."

There is no evidence whatsoever in the record of this case that the challenged statutes determine or influence the political ideology espoused by ballot-qualified parties. The Court of Appeals conclusion to the contrary is not supported by any reference to the record of this case. (*San Francisco County Democratic Cent. Com. v. Eu*, 826 F.2d 814, 828 (9th Cir. 1987))

The challenged statutes merely assure to the extent possible by regulation that whatever political ideology or program is adopted by a ballot-qualified political party is determined democratically within the party through the direct participation of all voters who choose to affiliate with it in the primary election. A ballot-qualified party endorses its candidates through majority vote of its members at the primary election; it does not endorse through operation of its official organizations which can never be as representative of the party as the latest primary election results.[1] The proven ability of unrepresentative factions to maneuver themselves into appearing to speak for a group of which they are merely a part is properly subject to regulation by the state to preserve the integrity of the primary and general elections.[2]

There is no evidence in the record below that plaintiffs' political parties want them to make endorsements in the primary election. Plaintiff county central committees, without reference to the record, now assert that they have the right to make endorsements in the name of their political parties over the objections of their parties. (B.A. 27)

The threat to the democratic nature of California ballot-qualified political parties comes not from the challenged statutes but from plaintiffs' attempt to usurp political power through judicial intervention rather than to win it by persuading their fellow party members to bestow it.

The record shows that the challenged statutes reflect the will of the affected political parties and exist to enable the parties to enforce that will in state court. Without the

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1. County central committees which seek to make endorsements are elected in the previous primary election two years earlier. (Cal. Elect. Code, §§ 8870 & 9370) Thus, they are all the more likely to be unrepresentative of the party members who vote in the pending primary.

2. The actions of plaintiffs in this litigation provide examples of this phenomenon. (e.g., Appellants' Opening Brief (Op.Br.) pp. 5, 25-26, n.6) Moreover, defendants provided evidence of the practice of misrepresentation of the views of a county central committee by factions within the committee. (J.A. 66, Rodda dec. ¶ 15)

challenged statutes, unrepresentative factions within a party can prevent the views of the majority from being heard and heeded by official party organizations by simply changing the by-laws without notice in smoke-filled rooms. (Appellants' Opening Brief (Op.Br.) 25-26, n.6)

Plaintiffs make no mention whatsoever in their brief of the effect of the endorsement process on the ability of central committees to carry out their responsibility for the party campaign in the general election which is the principal role assigned to them by their parties.[3] Defendants submitted uncontradicted evidence that the process of endorsement can impair and even eliminate the effectiveness of the county committees to carry on the party's campaign in the general election. (J.A. 62-68; J.S.App.II a-143 - a-145)

———o———

3. Plaintiffs cite only to the Elections Code as the source of their authority to perform party functions but they now attempt to ignore their responsibility for carrying out their parties' campaign in the general election. (B.A. 25, n.24) However, even the Court of Appeals acknowledged that the statutorily recognized role of the committees to carry out the party campaign is the *raison d'etre* of the committees and the source of their status. (*San Francisco County Democratic Cent. Com. v. Eu, supra,* 826 F.2d at 820.)

ARGUMENT

I

THE STATE MAY ESTABLISH ITS PRIMARY ELECTION AS THE EXCLUSIVE MEANS FOR ENDORSEMENT BY A BALLOT-QUALIFIED POLITICAL PARTY OF ITS CANDIDATES IN ORDER TO PROMOTE THE STATE'S INTEREST IN DEMOCRATIC GOVERNMENT AND ITS INTEREST IN STABLE GOVERNMENT ENHANCED BY THE RESULTING CLEAR CHOICES PRESENTED IN THE GENERAL ELECTION.

By quoting him out of context, plaintiffs cite to Professor Tribe for support of their contention that First Amendment doctrine precludes state regulation of political parties. (B.A. 43) Read in more complete context it appears that Professor Tribe believes that First Amendment doctrine does and should permit such regulation by states.

After providing the admonition quoted by plaintiffs, Professor Tribe goes on to describe the necessity for government regulation of the election process including "ballot access by independent candidates and political parties [and] conduct during the campaign". (L. Tribe, *American Constitutional Law* 1097 (2d ed. 1988)) He demonstrates the need for federal constitutional law to accommodate the symbiotic relationship between states and ballot-qualified political parties (Ibid. pp. 1118 & 1121):

> "Political parties exhibit many of the attributes of ordinary voluntary associations and yet seem imbued with a quasi-governmental character. While this hybrid aspect of political parties has left uncertain the extent to which constitutional strictures bind their conduct, it is clear that to the extent the law delegates

to political parties roles that fit significantly into official electoral or other governmental processes, their claims to private autonomy necessarily give way not only to governmental regulatory power, [omitted ftn. cites to *Marchioro v. Chaney*, 442 U.S. 191 (1979)] but also to the direct application of federal constitutional norms. (ftn. omitted)

"……

"Every state grants access to the general election ballot to the nominees of political parties that satisfy certain conditions, conditions that typically differ from those that independent candidates must satisfy. In effect, therefore, the state delegates to the political party the decidedly governmental function of determining who may gain a place on the ballot. [ftn. omitted] Notwithstanding the failure of the Supreme Court to formulate the governing principle, it thus seems clear that those actions of a political party integrally involved in the selection of a candidate for public office should be treated as state action when the state incorporates the party's choice by conferring some political benefit, such as preferential ballot access, upon that candidate."

As this Court reiterated in *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 107 S.Ct. 544, 554, ftn. 13 (1986), a state has a compelling interest " 'of confining each voter to a single nominating act' ". Plaintiff county central committees seek the right to speak for their respective parties as to the identity of the parties' candidates for partisan office prior to the primary election. Plaintiffs have been claiming a right of representative speech which is inherently fraudulent because the party speaks for itself in a democratic forum provided by the

state.[4] The state has a right consistent with the First Amendment to prohibit such speech to preserve the integrity of its electoral system, to protect the clarity of the message provided by the party at the primary election and to preserve that message as a clear choice on the general election ballot. (See, Op.Br. 42-43)

II

THE ASSERTION BY PLAINTIFF COUNTY CENTRAL COMMITTEES OF A RIGHT TO ENDORSE INDEPENDENT OF DETERMINATION OF THEIR ROLES BY THEIR RESPECTIVE POLITICAL PARTIES HAS NO SUPPORT WHATSOEVER IN THE RECORD OF THIS CASE.

As Justice Marshall so aptly stated in dissent on behalf of Justices Brennan and Blackmun in *Wygant v. Jackson Board of Education*, 476 U.S. 267, 295 (1986):

> "When this Court seeks to resolve far-ranging constitutional issues, it must be especially careful to ground its analysis firmly in the facts of the particular controversy before it."

As plaintiffs tacitly acknowledge by their desperate efforts to supplement the record below (B.A. 17-18), that record does not support the invalidation of the challenged

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4. "Representative speech" is not "core political speech" which is entitled to heightened protection as applied in *Meyer v. Grant*, 108 S.Ct. 1886, 1892 (1988). "Representative speech" is subject to regulation to assure that it is "representative". (Cf. *Abood v. Detroit Board of Education*, 431 U.S. 209, 235-236 (1977) [a union has no right to political speech on behalf of members who do not consent].)

statutes.[5] However, even if the record could be supplemented before this Court, it would demonstrate that plaintiffs have no basis for their claim that they speak for their parties with regard to the rights which they claim for themselves.

After appeal was taken to this Court, the state central committees of the California Democratic and Republican parties adopted by-law amendments which deny their county central committees the right to make endorsements of candidates for the party nomination. (Addendum to Motion to Affirm or Dismiss (M.A.D. Add.) 86a, Bell dec. exh. A; 98-105, Kelly dec. exh. A)

The by-law amendments adopted by the Republican State Central Committee were voted upon by the entire Central Committee in convention and prohibit any endorsements in contested primary elections by any Republican central committee including itself. (M.A.D. Add. 73a,

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5. Defendants have pointed out the insufficiency of the record at every stage of the proceedings in this litigation. (Statement of the Case, Op.Br.) Apparently assuming that no one will read the record, both the plaintiffs and the Court of Appeals assert that defendants only concern with the adequacy of the record relates to whether the plaintiff committees actually authorized participation in this litigation and to whether the major political parties supported the challenged statutes when they were enacted. (826 F.2d at 822, n.17, 822-823; B.A. 3-4, 13-15) Defendants made efforts to acquire information directly from the Republican and Democratic state central committees, which are not parties to this litigation, regarding their positions and records concerning the challenged statutes at the time of their enactment through the present. (J.A. 72-73, Graybill dec. ¶¶ 5-8) Defendants sought from plaintiffs all information they may have received from the state central committees on these issues in preparing this litigation. (J.A. 71, 76, Graybill dec. and exh. thereto)

Bell dec. ¶ 4) There is nothing in the record of this case to indicate that statutory changes in the composition of the Republican State Central Committee have not always been preceded by corresponding amendments to the by-laws such as are set forth at M.A.D. Add. 76a-86a, Bell dec., exh. A.

In sharp contrast with the Republican State Central Committee action, the by-law changes for the Democratic State Central Committee were not accomplished by vote of the entire central committee but by the "smoke filled room" method described at Op.Br. 25-26, n.6. (M.A.D. Add. 93a-94a, Kelly dec. ¶ 3) The amendments provide for endorsement in the name of the party pursuant to a process controlled by the state central committee. Contrary to the implication by plaintiffs (B.A. 45), neither the record below nor as plaintiffs have tried to supplement it indicates that the Democratic State Central Committee has amended its by-laws regarding the composition or leadership of the Committee.

Neither plaintiffs nor the courts below explain by reference to the record of this case how plaintiffs can claim the right to endorse when they were elected at the primary election with the clear and long-standing understanding that they had no right to do so as a committee or in the name of those who elected them. The opinions of the courts below are replete with echoes of the plaintiffs' assertions that providing them with the right to endorse is in the best interests of their parties. However, the record is barren of evidence that the parties have taken any official action manifesting concurrence with that view.

Without any support in and, consequently, with no reference to the record of this case, plaintiff Democratic and Republican county central committees now claim they had the "right to endorse, support, and oppose candidates in party primary elections until 1963, when the California legislature enacted the predecessor to section 11702 . . .". (B.A. 24)

The record establishes that the committees have never been granted that right by the California Democratic and Republican parties because it is antithetical to the principle of party member sovereignty and counter-productive to the established role of the committees. That role has been to conduct the parties' campaigns in the general election for their candidates selected at the primary election. (J.A. 62-68, Rodda Dec. ¶¶ 8-18; and J.S.App.II a-143 - a-145, 23 Ops.Cal.Atty.Gen. 119 (1954))

Plaintiff county central committees further claim the right under the First Amendment to make endorsements "[w]hatever position a particular political party may take at any given time" on their right to do so. (B.A. 28) Plaintiffs contend that the First Amendment precludes their respective political parties from prohibiting their making endorsements in the primary elections in order to preserve their effectiveness in carrying out the parties' campaigns in the general election. (Id.)

However, the only basis for the county committees' assertion of status independent of their respective political parties is that they are specifically recognized by the California Elections Code which, inter alia, provides for their organization and election. (B.A. 27) There is no reference to any source of legitimacy or charter of existence other

than statute. Those same statutes also preclude plaintiff county central committees from making endorsements and subordinate them to their respective state central committees in the performance of their principal role of carrying out their respective party campaigns for its candidates in the general election. (Cal. Elec. Code §§ 8940 & 9440)

By invalidating the statutes banning endorsements, the lower courts have violated the admonition of this Court reiterated in *Tashjian*, 107 S.Ct. at 554:

> "'And as is true of all expressions of First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational.'"

On the record of this case it simply cannot be determined that invalidation of the statutes has not actually deprived the affected political parties of political rights of speech and association protected by those statutes and the First Amendment.

———o———

CONCLUSION

For the reasons set forth herein and in their opening brief, defendants respectfully request that the decision of the Court of Appeals be reversed.

DATED: October 10, 1988

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

MARCH FONG EU, ET AL.,

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF THE LIBERTARIAN NATIONAL COMMITTEE AS AMICUS CURIAE IN SUPPORT OF APPELLEES

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On appeal from the United States
Court of Appeals for the Ninth Circuit

MOTION OF THE LIBERTARIAN NATIONAL COMMITTEE FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLEES

Motion for Leave to File Amicus Curiae Brief

The Libertarian National Committee moves for leave to file the appended amicus curiae brief in support of Appellees, for that:

1. Consent to file the appended amicus curiae brief in support of the Appellees was requested of the Appellants March Fong Eu, et al., through counsel, and was refused.

2. As more fully appears in the appended amicus curiae brief in support of the Appellees, the Libertarian National Committee is the governing body of the Libertarian Party, a national affiliation of voters constituting a political party, whose associational rights would be adversely affected by a decision in favor of the Appellants.

3. As more fully appears in the appended amicus curiae brief in support of the Appellees, the Libertarian National Committee proposes to brief questions of law concerning the applicability of the Supremacy Clause and First and Fourteenth Amendment guarantees of associational rights, to wit:

Whether the Appellants' asserted state interest in fostering "umbrella" political parties is a legitimate state interest justifying burdens on fundamental associational

rights where such burdens implicate the important national interest in unfettered public policy debate; and

Whether the Appellants' asserted state interest in fostering "umbrella" political parties is a legitimate state interest justifying burdens on fundamental associational rights where such burdens obstruct the ability of national political parties to maintain their own political identity.

4. The Libertarian National Committee has reason to believe that said questions of law will not be adequately addressed by the Appellees, because none of the Appellees is a national political party nor the governing body of a national political party.

5. As more fully appears in the appended amicus curiae brief in support of Appellees, said questions of law may be dispositive of the question of whether the statutes here challenged by the Appellees can withstand constitutional review.

6. As more fully appears in the appended amicus curiae brief in support of Appellees, the Libertarian National Committee can offer a national perspective on

the burdens imposed upon associational rights by the statutes here challenged by the Appellees.

Wherefore, the Libertarian National Committee moves for leave to file the appended amicus curiae brief in support of the Appellees.

Respectfully submitted,

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Court of Appeals for the Ninth Circuit

BRIEF OF THE LIBERTARIAN NATIONAL COMMITTEE AS AMICUS CURIAE IN SUPPORT OF APPELLEES

Interest of Amicus

The Libertarian National Committee is the governing body of the Libertarian Party, a national affiliation of voters formed for the purpose of nominating and electing candidates advocating libertarian principles to

federal, state and local public office. To effect this purpose, the Libertarian Party has adopted and published Convention Rules and Bylaws, a Statement of Principles and a Libertarian Party Platform. As the political organization of the larger libertarian movement, the Libertarian Party participates in federal, state and local campaigns to disseminate its principles and platform, to promote discussion of issues which its members believe are of importance to the electorate, and to advocate libertarian solutions to problems confronting the nation.

The Libertarian National Committee sanctions affiliate parties in each of the fifty states and in the District of Columbia, the Appellee Libertarian Party of California constituting the duly recognized state party affiliate for the State of California.

Because the responsibilities of the Libertarian National Committee include promoting the growth and development of its affiliate parties into viable and effective political organizations in every state, its perspective is broader than that of the Libertarian Party of California. Incident to this broader perspec-

tive, the Libertarian National Committee is particularly sensitive to state regulation which may tend to dilute the national party's platform or to distort the message of its presidential ticket. In a political environment in which virtually all political power is effectively consolidated in the hands of the two established "mainstream" political parties, compromise of the principles for which the Libertarian Party stands would eliminate its very reason for being.

Specifically concerning the instant case, the Libertarian National Committee is especially alarmed by the Appellants' assertion that the State of California has a legitimate state interest in molding all political parties into "umbrella" parties. Successful implementation of such a policy would narrow the breadth of national public policy debate and undermine the very purpose for which the members of the Libertarian Party have associated.

Summary of Argument

The political process by which candidates are nominated and elected to the offices of President and

Vice President of the United States is an area of penultimate national interest. The public policy debate engendered by the quadrennial presidential campaign is, to our system of government, an indispensable forum i· which the problems confronting the nation may be addressed and in which alternative solutions may be proposed and discussed by the national electorate. To a greater or lesser degree, congressional and senatorial campaigns provide similar forums which are integral to this national public policy debate.

Clearly, the states have an important interest in maintaining the integrity of the electoral process. Even so, state statutes which restrict participation in the political process or which narrow the content of the public policy debate are suspect under the traditional application of the constitutional guarantees afforded political expression by the First and Fourteenth Amendments.

Where the effects of state policy extend beyond a state's borders to stifle the national public policy debate, an important national interest is implicated and,

consequently, a broader analysis is warranted. State policies implicating the important national interest in vigorous political debate and contrary to the associational purposes for which "non-umbrella" political parties are created run afoul of the Supremacy Clause.

In the instant case, the state interest asserted by the Appellants to justify its intrusion into the internal affairs of political parties strikes at the soul of those political parties forged upon the anvil of uncompromising conscience. State statutes in furtherance of such asserted state interests impermissibly burden associational rights in a national context by application of the Supremacy Clause.

Argument

The Plaintiffs brought suit to challenge the constitutionality of several California statutes proscribing certain candidate endorsements, regulating the composition and selection of certain political party committees, and regulating the terms of office of certain political party officers. In defense, the Appellants have asserted that the challenged statutes

further a compelling state interest in maintaining "the stability of its governmental system." Appellants' Opening Brief at 43. "California uses its electoral system to promote the existence of 'umbrella' parties in furtherance of its interest in the stability of its political system." Appellants' Opening Brief at 42. This asserted state interest ignores the important contributions 'non-umbrella' political parties have made in the past and, if accepted by the Court as a legitimate state interest, threatens the continued existence of such national political parties in the future.

I. The Appellants' asserted state interest in promoting "umbrella" parties implicates an important national interest in unfettered public policy debate.

The Appellants' asserted state interest in promoting "umbrella" parties implicates an important national interest, that of "assuring the unfettered interchange of ideas for the bringing about of political and social changes desired by the people." New York Times Co. v. Sullivan, 376 U.S. 254, 269 (1964). "Competition in ideas and governmental policies is at the core of our electoral

process and of the First Amendment freedoms." Williams v. Rhodes, 393 U.S. 23, 32 (1968).

Indeed, the political process by which candidates are nominated and elected to the offices of President and Vice President of the United States, and to a greater or lesser degree, by which congressional and senatorial candidates are nominated and elected, is an area of penultimate national interest. See Cousins v. Wigoda, 419 U.S. 477, 489 (1975). The biennial public policy debate is an indispensable forum in which the problems confronting the nation may be addressed and in which alternative solutions may be proposed and discussed by the national electorate.

No less so than the state's interest in regulating access to the ballot, the state's interest in promoting one form of party organization over another should be

> considered in light of the significant role that third parties have played in the political development of the Nation. Abolitionists, Progressives, and Populists have undeniably had influence, if not always electoral success. As the records of such parties demonstrate, an election campaign is a means of disseminating ideas as well as attaining political office.

Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173, 185-186 (1979).[1]

II. Statutes implementing the Appellants' asserted state interest have an impact extending beyond the borders of the State of California.

While "umbrella" parties may be best suited to achieve electoral success by creating compromise coalitions of "mainstream" constituencies, they are, for that same reason, built on the shifting sands of political expediency and not on the bedrock of principle. As the Court recognized in Williams v. Rhodes, 393 U.S. at 33, "the principal policies of the major parties change to some extent from year to year." Other types of political parties, "ideological parties" (e.g. the Socialist Workers Party and the Libertarian Party),

---

[1] The Progressive Party never elected a President, never elected more than one senator or seventeen congressmen at one time, never controlled a state legislature. Nonetheless, within a period of forty years virtually every plank of its platform had been enacted into law. Progressive Party innovations co-opted by the 'umbrella' parties include the social security, the graduated income tax, child labor laws, compulsory education laws, the popular election of senators, women's suffrage, minimum wage, the Interstate Commerce Commission, the Federal Reserve Board, the Food and Drug Administration and the National Park Service, to name a few.

"single issue parties" (e.g. the Abolitionist Party and the Prohibition Party), and "personality parties" (e.g. John Anderson's National Unity Party and George Wallace's American Independent Party) are equally important forms of political association. Members of such political parties are, like the members of the "umbrella" parties, entitled to access to in the national public policy debate and share equally constitutional protections guaranteeing their associational rights.

By attempting to force all political parties into the mold of "umbrella" parties, the State of California seeks to alter the character of "ideological parties" and "single issue parties" whose distinguishing characteristic is their unwillingness to compromise the principles or the issues which set them apart from the established political parties.

Given the State of California's ranking in population and votes in the Electoral College and its prominence in the national public policy debate, its acknowledged policy in favor of "umbrella" parties casts a shadow far beyond its borders. Its effects extend to

the core of every national political organization which seats California delegates at its national convention.

As the Appellants acknowledge, "umbrella" parties achieve electoral success by forging winning coalitions through compromise and accommodation. Appellants' Opening Brief at 42. State policies calculated to "offer the voters choices between personalities" and "vague, ambiguous, and overlapping party programs," Id., may be fine for the Appellants, but there are few in the Libertarian Party who would agree.

III. Statutes implementing the Appellants' asserted state interest are contrary to the important national interest in unfettered public policy debate.

The Appellants' paternalistic promotion of "umbrella" parties belies an underlying premise that only the associational rights of those who associate to achieve electoral success warrant full fledged First and Fourteenth Amendment protection. In the view of Appellants, other political parties unwilling to "surrender" their distinctive identities and enter into a "symbiotic relationship" with the state can be accorded somewhat

less First and Fourteenth Amendment protection with impunity.

Either the Libertarian Party must forego its attempt to become a national political party with viable state parties in every state or, in the alternative, it must surrender its identity to exist in coerced symbiosis with the State of California as simply another amorphous "umbrella" party. By limiting the opportunities of like-minded voters to associate in the electoral arena to enhance their political effectiveness as a group, such restrictions threaten to reduce diversity and competition in the marketplace of ideas. Anderson v. Celebrezze, 460 U.S. 780, 794 (1983).

As applied to national political parties and their California affiliated state parties, California's enunciated policy is inconsistent with, and contrary to, the important national interest of unfettered public policy debate. Equally important, California's enunciated policy is inconsistent with, and contrary to, the obvious interest of the national political parties in maintaining

their own political ideologies untainted by statutory symbiosis with the State of California.

IV. The challenged statutes implicate an important national interest not admitting of divers treatment by the states.

When one state, by imposing regulations upon national political parties, interferes with the efforts of her sister states to foster broad political debate, it intrudes into an area not admitting of divers treatment by the states. By blurring the associational distinctions between national political parties, the Appellants' acknowledged policy of promoting "umbrella" political parties not only undermines the integrity of the "non-umbrella" political parties, it undermines the integrity of the political processes in her sister states as well.

Altering the message of "ideological" and "one-issue" state political parties within the State of California necessarily distorts the message of the national political parties with which they are affiliated. Eventually, the original message will be lost entirely in the process of accommodation for the sake of electoral success.

Such a course is entirely inconsistent with the primary values protected by the First Amendment, "a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open." New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964).

V. The Appellants' assertion that the challenged statutes reflect party policy is unfounded.

The Appellants' assertion that the challenged statutes reflect the party policy of the Appellee Libertarian Party of California is unfounded. Neither Libertarian Party, nor its affiliate state party, has done more than acquiesce to presumptively valid state statutes to which criminal sanctions attach until such time as they could be opportunely challenged in court.

Quite contrary to the Appellants' assertions, while Appellees associated with the Republican Party of California and the Democratic Party of California have fellow party members sitting in the California legislature to sponsor statutes tailored to effect party policy, the Libertarian Party of California does not now have, nor has it ever had, a Libertarian legislator to sponsor such

legislation on its own behalf. That the Libertarian Party of California is presently functioning under organizational requirements enacted for the Peace and Freedom Party belies the Appellants' assertion.

Conclusion

The Appellants' asserted state interest in molding all political parties into "umbrella" parties imposes impermissible burdens on associational rights when examined in the context of its impact on national political parties and its deleterious effect on the national public policy debate.

Respectfully submitted,

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